

# **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2008**

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**WEDNESDAY, MARCH 21, 2007**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 3:20 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin and Allard.

## **THE JUDICIARY**

### **STATEMENT OF HON. JULIA S. GIBBONS, JUDGE, U.S. COURT OF APPEALS, SIXTH CIRCUIT; CHAIR, BUDGET COMMITTEE, JUDICIAL CONFERENCE OF THE UNITED STATES**

#### **STATEMENT OF SENATOR RICHARD J. DURBIN**

Senator DURBIN. Good afternoon. I'd like to note that this is the first hearing on the judiciary's budget before this subcommittee since 2002.

This afternoon, we will be hearing from two distinguished witnesses, Judge Julia Gibbons and Director James Duff. I'm pleased to welcome Judge Gibbons, Chair of the Judicial Conference's Budget Committee, as well as Mr. Duff, Director of the Administrative Office of the Courts.

And I welcome my colleague, Senator Allard, who has joined me today, and others who may arrive.

For the past 3 fiscal years, the judiciary has achieved approximately a 5-percent budget increase, which has helped put the courts back on track after suffering significant cuts in fiscal year 2004. I'm pleased this subcommittee was able to increase funding for the judiciary in critically needed areas during this fiscal year despite operating under a continuing resolution.

With these fiscal year 2007 funds, the judiciary will be able to make progress in dealing with the increased caseload in areas like the Southwest border, prevent termination of 2,500 employees, ensure payments for constitutionally guaranteed criminal defense services, prevent discontinuation of civil jury trials prior to the end of the fiscal year, and address the courts' security needs, a top priority of mine.

## FISCAL YEAR 2008 BUDGET

For fiscal year 2008, there's a request for a 7.6-percent increase overall for the judiciary above last year's level. In addition, there's a request for an increase in the noncapital panel attorney rate, which would permit hourly rates to go from \$94 to \$113. The subcommittee will need to consider that carefully. I'm aware that in recent years the Judicial Conference undertook cost-containment measures, and, as a result, you were able to reduce some costs. I know your testimony discusses this, as well as additional cost-saving efforts underway.

Regarding court security, I understand you've had some problems with the ability of the Federal Protective Service to adequately safeguard the exterior perimeter of all courthouses. I want to hear more about that.

## NATIONAL ACADEMY OF PUBLIC ADMINISTRATION REPORT

Recently, the National Academy of Public Administration (NAPA) conducted a study of the judiciary's budget processes and how the judiciary prepares for the future. NAPA had some recommendations, which I will also be anxious to hear your response to.

I look forward to discussing these and other issues. I note the subcommittee is in receipt of written testimony submitted by the Court of Appeals for the Federal Circuit, Court of International Trade, Federal Judicial Center, and the U.S. Sentencing Commission, which will be submitted for the entire record.

I turn now to my colleague Senator Allard, if he would like to make an opening statement.

## STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Mr. Chairman, thank you. I've enjoyed working with you in previous years, and I look forward to working with you this year.

I share your concern with—well, first of all, I want to thank you for holding this hearing, and thank the witnesses for coming and sharing their expertise with us. I appreciate the opportunity to discuss the Federal judiciary's fiscal year 2008 budget request and justification. And, as we consider the allocation of appropriated Federal dollars, it's important that we identify the needs and challenges facing our Federal judicial system.

## GENERAL SERVICES ADMINISTRATION RENT

One issue that I've worked on for a considerable amount of time, and what I've supported, is legislation to address major problems affecting the Federal judiciary, specifically excessive rental charges by the General Services Administration (GSA) for courthouses and other space occupied by the courts across the country. I'm hearing from my judges in Colorado on that issue on a frequent basis. We must work together to prohibit the GSA from excessively overcharging to maintain and operate Federal court buildings and related costs.

Along with the chairman, I have some interest, also, in security issues. I have a question in that regard.

Thank you for being here. I look forward to the testimony.  
 Thank you, Mr. Chairman.  
 Senator DURBIN. Thank you, Senator Allard.  
 Judge Gibbons, the floor is yours.

#### OPENING STATEMENT OF JUDGE GIBBONS

Judge GIBBONS. Chairman Durbin, Senator Allard, as indicated, I'm Judge Julia Gibbons. I'm here to testify as chair of the Budget Committee of the Judicial Conference of the United States. Appearing with me today is Jim Duff, the new Director of the Administrative Office of the Courts. Jim brings much experience and knowledge of the judiciary to his position.

Mr. Chairman, you have been a great friend to the Federal judiciary through your work on the Judiciary Committee and the Appropriations Committee. I know that you were personally involved in efforts to provide \$12 million in fiscal year 2006 supplemental funding to the United States Marshals Service for judicial security, part of which went for installation and monitoring of security systems in judges' homes. I speak for all judges when I say we greatly appreciate Congress' continued concern with the safety of judges and their families.

#### FISCAL YEAR 2007 FUNDING

On behalf of the third branch, I want to thank you, Mr. Chairman, Senator Brownback, and also Chairman Byrd, for making the judiciary a funding priority in the just completed fiscal year 2007 appropriations cycle. Although we were very concerned about the prospect of a hard freeze for the courts in 2007, Congress responded to those concerns and provided funding for the judiciary sufficient to maintain current onboard staffing levels in the courts, as well as to address some of our immigration and law enforcement workload needs. We are aware that many executive branch programs and agencies were funded at or below fiscal year 2006 levels, and we are very appreciative for the funding level we received. I assure you that we will use the resources you have given us wisely.

#### FISCAL YEAR 2008 REQUEST

The goal of our fiscal year 2008 request is to sustain the staffing gains you helped us achieve in 2007. After a decade of steady workload growth that was not matched with similar growth in staffing resources, the courts' workload has finally begun to stabilize. With the funding you provided for 2007, clerks and probation offices will be able to hire more than 200 staff to address critical workload needs and partially close the gap between workload and staffing.

We recently updated our 2008 budget request in order to more accurately reflect our funding needs in light of changed requirements due to financing assumptions and delayed enactment of our 2007 appropriations. Based on these changes, we have reduced the judiciary's 2008 appropriation requirements by \$80 million.

Our revised 2008 appropriations requirements reflect an increase of \$452 million over the 2007 enacted level. Of this amount, \$390 million, or 86 percent, of the increase is for standard pay and non-pay inflationary adjustments and four adjustments to base, reflect-

ing increases in our space, information technology, defender services, and court security programs. The remaining \$62 million of our request is for program enhancements for courthouse security, information technology improvements, and for an enhancement in our defender services program to increase the hourly rate paid to private panel attorneys representing indigent defendants in Federal criminal cases. This need for an increase in the amount we pay panel attorneys is discussed in detail in my written testimony, and you referred to it earlier Mr. Chairman. I look forward to answering any questions you may have about it.

In constructing the 2008 budget request, the judiciary made every effort to contain costs. In 2004, the Judicial Conference adopted a comprehensive strategy to reduce the rate of growth in the judiciary's appropriation requirements without hurting the administration of justice, and this strategy has produced results. Our rent validation initiative alone identified space rent overcharges by GSA that resulted in over \$50 million in rent credits and cost avoidances. We are able to redirect these savings to other judiciary priorities, thus reducing our request for appropriated funds. Pursuing cost-containment initiatives throughout the judiciary is a top priority of the Judicial Conference.

#### FEDERAL PROTECTIVE SERVICE SECURITY

Finally, I turn to an issue of increasing concern to the judiciary; that is, the expense and quality of service provided the courts by the Federal Protective Service (FPS). FPS provides, on a reimbursable basis, exterior perimeter security for Federal agencies. We have received reports from several courts that perimeter security equipment provided by the FPS has not been maintained or repaired, thus compromising security in those courthouses. Last month Director Duff heard from a major metropolitan court which detailed inoperative FPS-provided exterior cameras and the absence of cameras at key locations, resulting in dead zones with no camera surveillance. Another district reported that, after pellets were fired at the courthouse at night, the court learned there was no surveillance footage to review, because FPS cameras were not recording any exterior views.

In many instances, the United States Marshals Service has assumed responsibility for repairing or replacing FPS-provided perimeter cameras. We appreciate the Marshals Service's proactive approach, but, unfortunately, it means that we are paying both the Marshals Service and FPS for identical services.

The situation with FPS has become sufficiently serious that last week the Judicial Conference endorsed a recommendation to support the efforts of the Marshals Service to assume security functions currently performed by FPS. We look forward to working with the subcommittee on this important issue.

#### PREPARED STATEMENTS

As I conclude my remarks, I ask that my entire statement, plus the statement of the Administrative Office and the other judicial entities to which you referred earlier, Mr. Chairman, be placed in the record. And, of course, I'll be happy to answer questions at the appropriate time.

Senator DURBIN. Without objection, the statements will be placed in the record.

[The statements follow:]

PREPARED STATEMENT OF HON. JULIA S. GIBBONS

INTRODUCTION

Chairman Durbin, Senator Brownback, and members of the subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2008, speaking on behalf of the 33,000 employees of the Judiciary judges, court staff, and chambers staff. I feel privileged to represent the Third Branch. In doing so, I will also apprise you of some of the challenges facing the Federal courts.

This is my third appearance before an appropriations subcommittee on behalf of the Federal Judiciary and, of course, my first appearance before this newly created Financial Services and General Government panel. We look forward to a productive relationship with the subcommittee and its staff as we begin the fiscal year 2008 budget cycle.

Mr. Chairman, you have been a great friend to the Federal Judiciary through your work on the Judiciary Committee and the Appropriations Committee. I know you were personally involved in efforts to provide \$12 million in supplemental funding to the United States Marshals Service, part of which was for the installation and monitoring of security systems in judges' homes. I speak for all judges when I say we greatly appreciate Congress's continued concern with the safety of judges and their families.

ADMINISTRATIVE OFFICE DIRECTOR JAMES C. DUFF

Appearing with me today is James C. Duff, the new director of the Administrative Office of the United States Courts. He succeeds Leonidas Ralph Mecham who retired last year after a record 21 years leading the Administrative Office. Director Duff was appointed by the Chief Justice in April 2006 and took office in July 2006. Jim brings much experience and knowledge of the Judiciary to his position.

FISCAL YEAR 2007 FUNDING

Mr. Chairman and Senator Brownback, on behalf of the entire Judicial Branch I want to thank you and your colleagues, especially Chairman Byrd, for making the Judiciary a funding priority in the just completed fiscal year 2007 appropriations cycle. The fiscal year 2007 process was certainly atypical in concluding with a joint resolution providing full year funding for the nine unfinished appropriations bills. Although we were very concerned about the prospect of a hard freeze for the courts in fiscal year 2007, Congress responded to those concerns and provided funding for the Judiciary sufficient to maintain current on-board staffing levels in the courts as well as to address some of our immigration-related workload needs. We are aware that hundreds of Executive Branch programs were funded at or below fiscal year 2006 levels, and we are very appreciative for the funding level we received. I assure you that we will use these resources wisely.

While I will discuss the fiscal year 2008 budget request for the Judiciary later in my testimony, I would like to mention that, like some Federal agencies, we had to make certain assumptions about our fiscal year 2007 funding levels when we were finalizing our 2008 budget request several months ago. We assumed that Congress would provide the midpoint of the House-passed and Senate-reported appropriations bills from the 109th Congress, less 1 percent for a possible across-the-board rescission. The final enacted fiscal year 2007 appropriations level is \$44 million below the fiscal year 2007 funding assumption we used to construct the fiscal year 2008 request. In order to provide you with our latest budget estimates, we recently updated the Judiciary's fiscal year 2008 request based on fiscal year 2007 enacted appropriations, other financing adjustments, and changes in requirements that have occurred since our 2008 budget was submitted. Our preliminary analysis indicates that the Judiciary's fiscal year 2008 appropriations requirements have declined by \$80 million from the original request level. A chart identifying, by account, the revised appropriations request for fiscal year 2008 is provided at Appendix A. We will provide a complete budget re-estimate package to the subcommittee in May.

## STATEMENTS FOR THE RECORD

Mr. Chairman, in addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

## ROLE OF THE FEDERAL JUDICIARY

Before I detail the specifics of our 2008 budget request, I will review various factors that shape the Federal Judiciary's budget. First and foremost is the role of the courts in our system of democratic government. Among our three independent, co-equal branches of government, the Judiciary is the place where the people go to resolve their disputes peacefully and according to the rule of law. We are protectors of individual rights. Through trying those accused of crimes and sentencing those who are convicted, we also uphold societal values as expressed in the laws you pass. It may seem obvious, but it is worth noting that every item in our budget request relates to performing the functions entrusted to us under the Constitution. We have no optional programs; everything ultimately contributes to maintaining court operations and preserving the judicial system that is such a critical part of our democracy.

## COST CONTAINMENT EFFORTS

The Judiciary is cognizant of the budget challenges facing our Nation and I want to assure the subcommittee that the Federal Judiciary is doing its part to contain costs. We are well aware that, with the conflicts in Iraq and Afghanistan and the investments being made to improve security here at home, non-security domestic spending has been flat for several years. And, looking forward, we know that the projected increase in mandatory entitlement spending in the coming years as baby boomers begin to retire will only add to Federal budget pressures. The Judiciary recognizes that the administration and Congress are rightfully concerned about overall Federal spending and budget deficits and that you face tough choices.

The Judicial Conference has always sought ways to reduce costs and enhance productivity. In fact, the Budget Committee which I currently chair has, since 1993, had an Economy Subcommittee whose sole purpose is to make funding recommendations to the full Budget Committee based on its independent analysis of the efficiency and effectiveness of Judiciary programs. The Economy Subcommittee is in effect the Third Branch's counterpart to the Office of Management and Budget. In fiscal year 2004 we retooled and enhanced our efforts to control costs. In that year, the Judiciary received a significant reduction to its budget request, primarily due to across-the-board cuts applied during final conference on our appropriations bill. This funding shortfall resulted in staff reductions of 1,350 employees, equal to 6 percent of the courts' on-board workforce. Of that number, 328 employees were fired, 358 employees accepted buyouts or early retirements, and 664 employees left through normal attrition and were not replaced.

The 2004 situation made clear that the Judicial Conference had to take steps to contain costs in a way that would protect the judicial process and ensure that budget cuts would not harm the administration of justice. In March 2004, the late Chief Justice William H. Rehnquist charged the Judicial Conference's Executive Committee with leading a review of the policies, practices, operating procedures, and customs that have the greatest impact on the Judiciary's costs, and with developing an integrated strategy for controlling costs. After a rigorous 6-month review by the Judicial Conference's various program committees, the Executive Committee prepared, and the Judicial Conference endorsed, a cost-containment strategy. The strategy focused on the primary cost drivers of the Judiciary's budget, which included an examination of the number of staff working in the courts, the amount they are paid, and the rent we pay to the General Services Administration for courthouses and leased office space. To be frank, cost containment is not the most popular initiative in all quarters of the Judiciary. But the courts realize it is necessary, and we have had great cooperation Judiciary-wide as we have moved forward on cost containment initiatives. Pursuing the implementation of cost containment initiatives will continue to be a top priority of the Judicial Conference.

*Rent Validation Project*

The amount of rent we pay to GSA has been a matter of concern to the Judiciary for more than 15 years. Our GSA rent bill consumes about 20 percent of the courts' operating budget, and we project the rent bill will exceed \$1 billion in fiscal year 2008. Our relationship with GSA, though strained in recent years, has become more productive as Director Duff will discuss in more detail in his testimony. In addition,

we remain vigilant in our efforts to control our rent costs, and at present GSA and the Judiciary are working cooperatively to this end.

The Judiciary's rent validation project has achieved significant savings. This initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery was savings and cost avoidance over 3 fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to research and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through the rent validation effort we recently identified additional overcharges totaling \$22.5 million in savings and cost avoidance over 3 years. GSA has been very responsive to correcting billing errors that we bring to their attention. By identifying and correcting space rent overcharges we are able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.

#### *Rent Caps*

To contain costs further, the Judiciary is establishing budget caps in selected program areas in the form of maximum percentage increases for annual program growth. For our space and facilities program, the Judicial Conference approved in September 2006 a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years 2009 through 2016. By comparison, the increase in GSA rent in our fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs, and courts will have to further prioritize space needs and deny some requests for additional space.

#### *Other Cost Containment Initiatives*

The Judiciary has adopted and is pursuing a number of measures to contain costs and improve efficiency throughout the Federal courts. These initiatives include redefining work requirements for probation officers, imposing tighter restrictions on appointing new magistrate judges, consolidating computer servers, and modifying courthouse space design standards. I would encourage members of the subcommittee to read a compendium of these initiatives in our report entitled *Innovation in Lean Times: How Federal Court Operations Are Changing to Meet Demands*. This report was prepared by the Administrative Office in July 2006 and distributed to the House and Senate Appropriations Subcommittees in the 109th Congress. I have asked Administrative Office staff to provide the report to the current appropriations subcommittees as well.

#### THE JUDICIARY'S ROLE IN HOMELAND SECURITY

The role of the Judiciary in the Nation's homeland security is often overlooked. Actions taken by the Department of Homeland Security and the Department of Justice have a direct and immediate impact on the Federal courts. Whether it is costly high-profile terrorist cases or soaring increases in immigration cases and related appeals, much of the workload ends up on Federal court dockets, and sufficient resources are required in order to respond to it. In recent years, Congress and the administration have significantly increased spending for homeland security through the annual and supplemental appropriations processes. Non-defense homeland security spending has more than tripled since 2001. In sharp contrast, appropriations for the courts' operating budget have increased only 33 percent and on-board court staffing levels have declined by 5 percent. Increased spending on homeland security is expected to continue, as evidenced by the President's Fiscal Year 2008 Budget, which includes a 9.5 percent increase in government-wide non-defense homeland security spending. The President's budget includes an unprecedented \$13 billion to strengthen border security and immigration enforcement, a component of our workload in which we have seen dramatic growth in recent years. In fact, immigration-related cases now account for 25 percent of the district courts' criminal caseload, up from 18 percent in 2001, and surpass all other offense categories except drug cases. This President's request includes funding for 3,000 new border patrol agents to achieve the goal of doubling the force by the end of 2008 (18,000+ agents) from the 2001 level (9,100 agents). The Judiciary cannot absorb the additional workload generated by homeland security initiatives within current resource levels.

THE JUDICIARY'S WORKLOAD <sup>1</sup>

I turn to a discussion of the workload facing the courts. As indicated in the caseload table in our fiscal year 2008 budget request, 2007 caseload projections, which are utilized to compute fiscal year 2008 staffing estimates, increase slightly in probation and pretrial services, and decline slightly in appellate, civil, and criminal filings. There is a steep decline in projected bankruptcy filings. While our caseload has begun to stabilize after a decade of steady growth, it nonetheless remains at near-historic levels in most categories. I will discuss some recent trends and caseload drivers and try to offer some context for these workload figures.

*Probation and Pretrial Services*

Workload in our probation and pretrial services programs continues to grow. The number of people under the supervision of Federal probation officers hit a record 113,697 in 2006 and is expected to increase in 2007 to 114,600. In addition to the increased workload, the work of probation officers has become significantly more difficult. In 1985, fewer than half of the offenders under supervision had served time in prison. By 2006, the percentage had climbed to nearly 80 percent. As these figures indicate, probation officers no longer deal primarily with individuals sentenced to probation in lieu of prison. Offenders coming out of prison have greater financial, employment, and family problems than when they committed their crimes. In addition, offenders under supervision have more severe criminal histories than in the past. Between 1995 and 2005, there was a 78 percent increase in the number of offenders sentenced with more severe criminal backgrounds. Offenders re-entering the community after serving time in prison require close supervision by a probation officer to ensure they secure appropriate housing and employment. Successful re-entry improves the likelihood that offenders will pay fines and restitution and become tax-paying citizens.

Recent legislation will also increase our probation workload. The Adam Walsh Child Protection and Safety Act of 2006 is expected to increase significantly the number of sex offenders coming into the Federal probation and pretrial system for supervision. Monitoring the behavior of sex offenders is very challenging and requires intense supervision on the part of probation and pretrial services officers to protect the community.

*Appellate Filings*

Appellate filings hit an all-time high of 68,313 in 2006 and are expected to decline to 67,000 filings in 2007. The recent growth in the appellate docket has been due to more Board of Immigration Appeals (BIA) decisions from the Department of Justice (DOJ) being challenged in the appellate courts, particularly in the Second and Ninth Circuits. In fiscal year 2006, 33 percent (11,911) of all BIA decisions were appealed to the Federal courts, up from 6 percent (1,757) in fiscal year 2001. These BIA appeals often turn on a credibility determination by a DOJ immigration judge thus requiring close judicial review of a factual record by the appellate courts.

Along with the increase in BIA appeals, the courts have seen significant increases in criminal appeals resulting from the Supreme Court rulings in *United States v. Booker* and *United States v. Fanfan* in which the Court held judge-found sentencing factors unconstitutional in a mandatory sentencing scheme and made Federal sentencing guidelines advisory. Criminal appeals are currently 29 percent higher than they were prior to the decisions in those cases. The Supreme Court will decide two cases this term related to the appellate review of post-Booker sentences which may also impact the number of criminal appeals.

*Civil Filings*

Civil filings in the courts generally follow a more up and down filing pattern. In 2005 civil filings reached a record 282,758 filings followed by 244,343 filings in 2006 and 241,300 filings projected for 2007. The record filings in 2005 were largely due to the Homegold/Carolina Investors fraud case in North Carolina and a spike in personal injury liability lawsuits.

*Criminal Filings*

Criminal filings for 2007 are projected to total 67,200, down slightly from the 2006 level, but still within 5 percent of the all-time high set in 2004 of 71,098 filings. We understand that criminal filings may be depressed due to significant vacancies in Assistant U.S. Attorney positions nationwide. As these vacancies are filled, we expect criminal filings to increase again.

<sup>1</sup>Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2006 workload reflects the 12-month period from June 30, 2005 to June 30, 2006).



Although overall criminal caseload in the Federal courts has begun to level off, caseload in the five district courts along the southwest border with Mexico has soared since 2001 as a result of border and law enforcement initiatives undertaken by the Department of Homeland Security and Department of Justice. Those five districts out of a total 94 judicial districts account for nearly one-third of all criminal cases nationwide. Particularly hard hit is the District of New Mexico where criminal filings have nearly doubled since 2001 (up 92 percent) and the Southern District of Texas where filings are up 40 percent.

#### *Bankruptcy Filings*

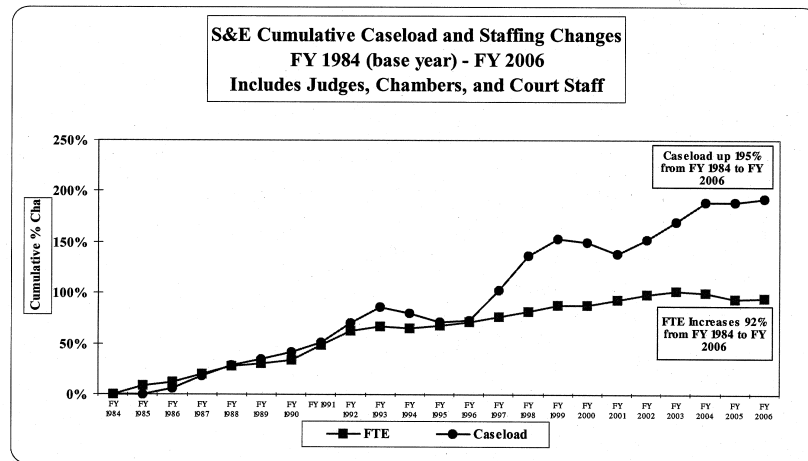
The sharp decline in bankruptcy filings projected for 2007 clearly reflects the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) that went into effect October 17, 2005. The Administrative Office projects bankruptcy filings will decline by more than 500,000 filings from 2006 to 2007. Although filings have started to rebound, no consensus exists among bankruptcy experts as to when, or if, filings will return to pre-BAPCPA levels. Of course, the root causes of bankruptcy job loss, business failure, medical bills, credit problems, and divorce were not affected by the legislation and are expected to continue to be the primary drivers of filings. The number of filings alone, however, should not be viewed as the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions more complex and time-consuming. Preliminary information from 10 courts now being studied suggests that the actual per-case work required by the bankruptcy courts has increased significantly under the new law, at least partially offsetting the impact on the bankruptcy courts of lower filings.

#### CASELOAD AND STAFFING: A HISTORICAL PERSPECTIVE

It is useful to examine Judiciary workload and staffing from a historical perspective. The chart below details Judiciary staffing and aggregate caseload for fiscal year 1984 through fiscal year 2006. Aggregate caseload is a composite of criminal, bankruptcy, appellate, and civil case filings as well as our probation and pretrial services programs. This chart illustrates several things. First, it shows the steady growth in the courts' caseload over the last 20 years. The chart also shows the cyclical nature of the courts' caseload when viewed in the aggregate: caseload peaks, declines slightly, then tends to peak again. Lastly, it shows that staffing resources have lagged well behind the increase in caseload for the last decade.

From fiscal year 1984 to fiscal year 2006, the courts' aggregate caseload increased by 195 percent while total court staffing which includes judges, chambers staff, and staff in our clerks and probation and pretrial services offices increased by only 92 percent. Staffing levels generally kept pace with caseload growth through the mid-1990's. But over the last decade caseload began to outpace court staffing levels and, to date, the courts have not had the resources needed to catch up. And the gap has widened in recent years. Between fiscal years 2001 and 2006 the courts' aggregate caseload increased by 23 percent while staffing resources increased by only 1 percent.

What has been the impact of this resource gap? The Judiciary has sought to narrow the gap through the implementation of automation and technology initiatives, improved business practices, and cost-containment efforts, but we have not been able to close it entirely. Our statistics indicate that the courts are struggling to meet workload demands. Pending cases carried over from 1 year to the next indicate a lack of judge and court staff resources. From fiscal year 1996 to 2006, the number of criminal cases pending per filing increased 55 percent, appeals cases pending per filing increased 13 percent, bankruptcy cases pending per filing increased 13 percent, and civil cases pending per filing increased 4 percent. If courts do not have the judges and staff needed to address workload adequately, civil cases are delayed as the district courts must focus on the criminal docket to meet provisions of the Speedy Trial Act, clerks offices must reduce office hours for the public in order to focus on case management activities, and probation officers have to reduce supervision for some offenders in order to focus on the more dangerous supervision cases. These are just a few examples.



The Judiciary uses regularly updated staffing formulas for determining the number of staff required in clerks and probation and pretrial services offices. Each formula incorporates multiple workload factors, but case filings are a primary determinant of the courts' staffing needs. Based on these staffing formulas, to be fully staffed we would need an additional 2,000 people in fiscal year 2008 above current on-board levels to address the courts' workload needs. Of course I am not suggesting that Congress provide the Judiciary with funding for such a dramatic increase in staff. But I am making the point that the courts are currently understaffed. With the resources Congress provided the Judiciary in fiscal year 2007, the courts are in a position to fill more than 200 new positions to address our most critical workload needs, particularly for immigration-related workload in the district and appellate courts. Because fiscal year 2007 funds were not made available to the courts until halfway into the fiscal year, all of these new staff may not be on-board until 2008. For this reason, and as a cost containment measure, our revised budget estimates for fiscal year 2008 no longer include funding for new positions in clerks and probation/pretrial offices. It is therefore critical that the courts be funded at a current services level in fiscal year 2008 in order to sustain the staffing gains funded in fiscal year 2007. The fact that the courts' caseload has stabilized after a decade of steady growth affords us the opportunity to begin closing the gap between our staffing levels and our workload. The funding provided in 2007 will enable the courts to begin to do so.

#### FEDERAL PROTECTIVE SERVICE

An issue of increasing concern to the Judiciary is the expense and quality of security provided the courts by the Federal Protective Service (FPS). FPS provides, on a reimbursable basis, exterior perimeter security for Federal agencies. FPS security charges are of two types: the mandatory "basic" security charge which is a fee assessed to each tenant agency based solely on the space occupied; and a "building-specific" security charge that is assessed against each tenant agency to pay for the acquisition, maintenance and repair of security equipment provided by FPS. Examples of building-specific security include the posting of FPS contract security guards at a facility and perimeter cameras that view the exterior areas of federal buildings. Both the basic and building specific charges are paid to FPS out of our Court Security appropriation. The Judiciary does not have control over the increases charged by FPS for the mandatory basic security charge. According to an FPS estimate, the Judiciary will incur a \$4 million increase for basic security charges in fiscal year 2008 because FPS is increasing the rate by approximately 46 percent, from 39 cents to 57 cents per square foot.

We have received reports from several courts that perimeter security equipment provided by FPS has not been maintained or repaired, thus compromising security in those courthouses. A district judge, who is the chair of the court security committee at a major metropolitan courthouse, wrote Director Duff last month detailing his concerns regarding perimeter security deficiencies at his courthouse. He wrote

of inoperative FPS-provided exterior cameras and the absence of cameras at key locations resulting in “dead zones” with no camera surveillance. Another district court reported that after pellets were fired at the courthouse one night, the court learned there was no surveillance footage to review because FPS cameras were not recording any exterior views.

These and similar situations nationwide during fiscal year 2006 resulted in a number of courthouses with serious security vulnerabilities. In order to help ensure that the courts have adequate security, the United States Marshals Service (USMS) assumed responsibility for repairing or replacing FPS-provided perimeter cameras at a number of courthouses where it was apparent that FPS was not able to do so. This resulted in the Judiciary’s paying for the same services twice: once to FPS in the building-specific security charge and also to the USMS in the funding we transfer to it for systems and equipment for interior and perimeter courthouse security.

FPS continues to be unable to provide the Judiciary with adequate cost-effective services, working equipment, detailed billings records, and timely cost projections. FPS has chronic financial management and billing problems evidenced by the \$60 million funding shortfall it reported in November 2006 and which recent reports indicate has since grown to \$80 million. In response to these shortcomings, the USMS has initiated a nationwide survey to assess the status of perimeter security at court facilities. The Judiciary greatly appreciates its proactive efforts in this area. Because of on-going FPS performance issues, the Judicial Conference last week endorsed a recommendation to support the efforts of the USMS, through legislative means if necessary, to assume security functions currently performed by FPS at court facilities (where the Judiciary is the primary tenant) and to receive the associated funding. The USMS has the expertise and provides excellent service with low administrative expenses. It takes responsibility for its work. FPS on the other hand has chronic funding problems that hamper its ability to maintain its security equipment adequately.

Ensuring the safety of judges, court employees, attorneys, jurors, defendants, litigants, and the public in court facilities is of paramount importance to the Judiciary. For this reason, we support expansion of the USMS’s current mission to include the perimeter security of court facilities nationwide. We look forward to working with the subcommittee on this very important issue.

#### FISCAL YEAR 2008 BUDGET REQUEST

As I mentioned earlier in my testimony, we constructed our fiscal year 2008 budget request based on actions in the 109th Congress on fiscal year 2007 appropriations bills. Specifically, we assumed for each Judiciary account that Congress would provide the midpoint of the House-passed and Senate-reported appropriations bills from the 109th Congress, less 1 percent for a possible across-the-board rescission. The final enacted fiscal year 2007 appropriations level is \$44 million below the fiscal year 2007 funding assumption we used to construct the fiscal year 2008 request. Over the last several weeks, Administrative Office staff have been working with the various Judicial Branch entities to update fiscal year 2008 funding requirements for each account based on enacted fiscal year 2007 appropriations as well as other financing adjustments and changes in requirements that have occurred since our 2008 budget was finalized. Our preliminary analysis indicates that the Judiciary’s fiscal year 2008 appropriations requirements have declined by \$80 million from the request level of \$6.51 billion, resulting in a revised appropriation requirement of \$6.43 billion. A summary table detailing the original and revised fiscal year 2008 appropriations request for each Judiciary account is included at Appendix A. The appropriations increase the Judiciary is seeking for fiscal year 2008, which I will describe briefly, is reflective of these revised requirements. As I mentioned earlier, we will provide a complete budget re-estimate package to the subcommittee in May.

As a result of our recent update of requirements, the Judiciary is requesting a 7.6 percent overall increase above fiscal year 2007 enacted appropriations. The courts’ Salaries and Expenses account requires a 6.7 percent increase for fiscal year 2008. We believe this level of funding represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request submitted by the administration, I would note that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary’s funding requirements essentially reflect basic operating costs which are predominantly for personnel and space requirements. Eighty-six percent (\$390 million) of the \$452 million increase being requested for fiscal year 2008 funds the following base adjustments, which represent items for which little to no flexibility exists:

- Standard pay and benefit increases for judges and staff. This does not pay for any new judges or staff but rather covers the annual pay adjustment and benefit increases (e.g. COLAs, health benefits, etc.) for currently funded Judiciary employees. The amount budgeted for the cost-of-living adjustment is 3.0 percent for 2008.
  - An increase in the number of on-board active and senior Article III judges and the annualization of new magistrate judge positions.
  - The projected loss in non-appropriated sources of funding. In addition to appropriations, the Judiciary collects fees that can be used to offset appropriation needs. Fee collections not utilized during the year may be carried over to the next fiscal year to offset appropriations requirements. We will keep the subcommittee apprised of changes to fee or carryforward projections as we move through fiscal year 2007.
  - Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an increase for Federal Protective Service charges for court facilities.
  - Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program, which has allowed the courts to "do more with less" absorbing workload increases while downsizing staff. Mandatory increases in contributions to the Judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers. Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.
  - Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective assistance of counsel. The CJA provides that the Federal courts shall appoint counsel for those persons who are financially unable to pay for their defense. The number of CJA representations is expected to increase by 8,200 in fiscal year 2008, as the number of defendants for whom appointed counsel is required increases.
- After funding these adjustments to base, the remaining \$62 million requested is for program enhancements. Of this amount:
- \$22 million to increase the non-capital panel attorney rate from \$96 to \$113 per hour. I will discuss this requested increase in more detail in a moment. \$11 million would provide for critical security-related requirements.
  - \$10 million will provide for investments in new information technology projects and upgrades, and courtroom technology improvements.
  - \$11 million will provide for unfunded fiscal year 2007 recurring court operating expenses that were not funded in fiscal year 2007 but are necessary requirements in fiscal year 2008.
  - Of the remaining \$8 million, \$1 million would provide for two additional magistrate judges and associated staff; \$1 million will pay for the Supreme Court's exterior landscape renovation project; \$2 million is needed for staffing increases for the Supreme Court (+7 FTE), Federal Circuit (+6 FTE), and the Federal Judicial Center (+7 FTE). The remaining \$4 million is for smaller requirements in other Judiciary accounts.

#### INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We believe that one program enhancement in our budget request deserves strong consideration in order to ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$22 million to increase the non-capital panel attorney rate to \$113 per hour effective January 2008. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in Federal court. These attorneys are currently compensated at an hourly rate of \$92 for non-capital cases and up to \$163 for capital cases. The hourly non-capital rate will increase to \$94 per hour effective April 1, 2007 as a result of the \$2 per hour cost-of-living adjustment you provided in fiscal year 2007. We are very grateful for this modest rate adjustment. The Judiciary requests annual cost-of-living adjustments for panel attorneys similar to the annual adjustments provided to federal employees for two reasons. First, cost-of-living adjustments allow the compensation paid to panel attorneys to keep pace with inflation to maintain purchasing power and, in turn, enable the courts to attract and retain qualified attorneys to serve on their CJA panels. Second, regular annual adjustments eliminate the need to request large "catch-up" increases in order to account for several years with no rate adjustments. The subcommittee recognized the importance of annual

cost-of-living adjustments by providing one to panel attorneys in fiscal year 2007. I would note that the previous subcommittee provided a cost-of-living adjustment in fiscal year 2006.

Our request to increase the non-capital hourly rate to \$113 amounts to a partial catch-up increase. The non-capital rate was increased to \$90 in May 2002 but no adjustments were made to that rate until January 2006, when it was raised to \$92, and which will increase to \$94 in a few weeks, on April 1, as I just mentioned. In comparison, since May 2002, the Department of Justice has been paying \$200 per hour to retain private attorneys with at least 5 years of experience to represent current or former federal employees in civil, congressional, or criminal proceedings. The Judiciary requested a panel attorney rate of \$113 per hour in fiscal years 2002, 2003, and 2004. In report language accompanying the fiscal year 2004 appropriations bill, the subcommittee with jurisdiction over our funding at the time said the Judiciary was not presenting a strong case for the \$113 rate and suggested we survey the courts and gather data to make a more compelling case. Thus, we did not request the \$113 rate in fiscal years 2005 and 2006 while the Administrative Office conducted surveys of judges and panel attorneys and analyzed the responses.

In a 2004 survey of Federal judges, over half of them indicated that their courts were currently experiencing difficulty identifying enough qualified and experienced panel attorneys to accept appointments in non-capital cases. In the first statistically valid, nationwide survey of individual CJA panel attorneys conducted in March 2005, a significant percentage (38 percent) of the over 600 attorneys surveyed reported that since the hourly compensation rate had increased to \$90 per hour in May 2002, they had nevertheless declined to accept a non-capital CJA appointment. Strikingly, after covering overhead costs for the predominantly solo and small-firm lawyers who take CJA cases, their net pre-tax income for non-capital CJA representations amounted to only about \$26 per compensated hour. A large proportion (70 percent) of the CJA attorneys surveyed in March 2005 reported that an increase to the \$90 hourly rate is needed for them to accept more non-capital cases.<sup>2</sup>

The requested increase to \$113 per hour reflects the minimum amount the Judicial Conference believes is needed to attract qualified panel attorneys to provide the legal representation guaranteed by the Sixth Amendment. Indeed, \$113 is the level that the Judiciary was seeking in 2002 when Congress increased the rate to \$90. Recognizing fiscal realities, the \$113 rate request is well below the \$133 rate authorized by the CJA. I urge you to give this rate increase strong consideration.

#### CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

Year in and year out, the Administrative Office (AO) of the United States Courts serves and provides critical support to the courts. The more the courts have to do, and the fewer resources with which they have to do it, the more challenging the job of the AO becomes. With only a fraction (1.6 percent) of the resources that the courts have, the AO does a superb job of supporting our needs.

The AO has key responsibilities for Judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, program management, and information technology services to the courts. None of these responsibilities has gone away and new ones are continually added, yet the AO staffing level has been essentially frozen for 10 years.

The AO played a central role in assisting the courts to implement the bankruptcy reform legislation, as well as in helping those courts affected by Hurricanes Katrina and Rita and the myriad of space, travel, technology, and personnel issues that had to be addressed.

In my role as Chair of the Judicial Conference Committee on the Budget, I have the opportunity to work with many staff throughout the AO. They are dedicated, hard working, and care deeply about their role in supporting this country's system of justice.

The fiscal year 2008 budget request for the Administrative Office is \$78.5 million, representing an increase of \$6.2 million. All of the requested increase is necessary to support adjustments to base, mainly standard pay and general inflationary increases, as well as funding to replace the anticipated lower level of fee revenue and carryover amounts with appropriated funds in fiscal year 2008.

I urge the subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and lead the ef-

<sup>2</sup> Although rates have been raised to \$92 per hour since the survey was taken, this \$2 per hour increase would not have materially affected the survey responses.

forts for them to operate more efficiently. Director Duff discusses the AO's role and budget request in more detail in his testimony.

#### CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

I also urge the subcommittee to approve full funding for the Federal Judicial Center's request of \$24.5 million for fiscal year 2008.

The Center's director, Judge Barbara Rothstein, has laid out in greater detail the Center's needs in her written statement. I simply add that the Center plays a vital role in providing research and education to the courts. The Judicial Conference and its committees request and regularly rely on research projects by the Center. These provide solid empirical information on which judges, the Judiciary, and Congress and the public, depend on in reaching important decisions relating to litigation and court operations. Likewise, the Center's educational programs for judges and court staff are vital in preparing new judges and court employees to do their jobs and in keeping them current so that they can better deal with changes in the law, and in tools like technology that courts rely on to do their work efficiently.

The Center has made good use of its limited budget. It has made effective use of emerging technologies to deliver information and education to more people more quickly. The relatively small investment you make in the Center each year (less than one-half of one percent of the Judiciary's budget) pays big dividends in terms of the effective, efficient fulfillment of the courts' mission.

#### CONCLUSION

Mr. Chairman, I hope that my testimony today provides you with a better appreciation of the challenges facing the Federal courts. I realize that fiscal year 2008 is going to be another tight budget year as increased mandatory and security-related spending will result in further constrained domestic discretionary spending. The budget request before you recognizes the fiscal constraints you are facing. Through our cost-containment efforts we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know that you agree that a strong, independent Judiciary is critical to our Nation. I urge you to fund this request fully in order to enable us to maintain the high standards of the United States Judiciary. A funding shortfall for the Federal courts could result in a significant loss of existing staff, dramatic cutbacks in the levels of services provided, and a diminution in the administration of justice.

Thank you for your continued support of the Federal Judiciary. I would be happy to answer any questions the subcommittee may have.

**APPENDIX A.—JUDICIARY APPROPRIATION FUNDING**  
[Dollars in thousands]

Appropriation Account	Fiscal Year 2007			Fiscal Year 2008			Percent Change: Fiscal Year 2008 Revised vs. Fis- cal Year 2007 Enacted
	Assumed Appo- pation 1 (Oct. 15, 2006)	Enacted Level Public Law 110-52 (Feb. 15, 2007)	Change: Enacted vs. Assumed	President's Budget (Feb. 5, 2007)	Revised Budget Estimates (March 21, 2007)	Change: Revised Estimates vs. President Budget	
U.S. Supreme Court:							
Salaries and Expenses .....	\$62,792	\$62,576	(\$216)	\$66,526	\$66,526	.....	\$6.3
Care of Building and Grounds .....	12,829	11,427	(1,402)	12,201	12,201	.....	6.8
Total .....	75,621	74,003	(1,618)	78,727	78,727	.....	6.4
U. S. Court of Appeals for the Federal Circuit .....	25,407	25,311	(96)	28,538	28,442	(\$96)	12.4
U.S. Court of International Trade .....	16,037	15,825	(212)	16,727	16,632	(95)	5.1
Courts of Appeals, District Courts and Other Judicial Services:							
Salaries and Expenses:							
Direct .....	4,527,194	4,476,550	(50,644)	4,854,455	4,774,757	(79,698)	6.7
Vaccine Injury Trust Fund .....	3,971	3,971	.....	4,099	4,099	.....	3.2
Total .....	4,531,165	4,480,521	(50,644)	4,858,554	4,778,856	(79,698)	6.7
Defender Services .....	747,987	776,283	28,296	859,834	859,834	.....	10.8
Fees of Jurors and Commissioners .....	62,448	60,945	(1,503)	62,350	63,081	731	3.5
Court Security .....	395,045	378,663	(16,382)	421,789	421,789	.....	11.4
Subtotal .....	5,736,645	5,696,412	(40,233)	6,202,527	6,123,560	(78,967)	7.5
Administrative Office of the U.S. Courts .....	73,326	72,377	(949)	78,536	7	8,536	08.5
Federal Judicial Center .....	23,211	22,874	(337)	24,835	24,475	(360)	7.0
Judiciary Retirement Funds .....	58,300	58,300	.....	65,400	65,400	.....	12.2
U.S. Sentencing Commission .....	15,266	14,601	(665)	16,191	15,477	(714)	6.0
Direct .....	6,019,842	5,975,732	(44,110)	6,507,382	6,427,150	(80,232)	.....
Vaccine Injury Trust Fund .....	3,971	3,971	.....	4,099	4,099	.....	.....

**APPENDIX A.—JUDICIARY APPROPRIATION FUNDING—Continued**  
[Dollars in thousands]

Appropriation Account	Fiscal Year 2007		Fiscal Year 2008			
	Assumed Appropriation, <sup>1</sup> (Oct. 15, 2006)	Enacted Level Public Law 110-5 <sup>2</sup> (Feb. 15, 2007)	Change: Enacted vs. Assumed	President's Budget (Feb. 5, 2007)	Revised Budget Estimates (March 21, 2007)	Change: Revised Estimates vs. President Budget
Total	6,023,813	5,979,703	(44,110)	6,511,481	6,431,249	(80,232)
						7.6

<sup>1</sup> Reflects the assumed fiscal year 2007 appropriation level that was used in developing the fiscal year 2008 President's Budget. It was based on the House/Senate midpoint less 1 percent for an assumed across-the-board rescission.

<sup>2</sup> The bottom line total is consistent with the fiscal year 2007 amount appropriated to the Judiciary in H.J. Res. 20 (Public Law 110-5).



PREPARED STATEMENT OF PAUL R. MICHEL, CHIEF JUDGE, UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

Mr. Chairman, thank you for allowing me to submit my statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2008 budget request.

Our request totals \$28,442,000, an increase of \$3,131,000 (12 percent) over the fiscal year 2007 appropriation of \$25,311,000.

Fifty-six percent of that increase, \$1,761,000, is for congressionally- and contractually-mandated adjustments to base (such as COLAs and escalation in rent and contracts), as well as one adjustment to the base appropriation for lease of judges' workspace.

This lease increase, a request for \$496,000, will allow us to provide the work space necessary for four judges (and their staff) now eligible to take senior status and an additional three judges who become eligible to take senior status in fiscal year 2009. Even now our courthouse simply does not have space for the judge who took senior status during the past year, much less offer chambers to seven other judges eligible to take senior status in this fiscal year and the next.

The retention of judges through senior status is what has allowed this court to remain current. Since this court's inception in 1982, the number of active judges on our court has remained the same, even though our caseload has nearly doubled and the technology of our patent caseload has become increasingly complex. Clearly, the provision of adequate work space for judges willing to take senior status (as opposed to leaving the court through retirement) is critical to our being able to retain these highly valuable contributors to our court's output. If adequate work space cannot be provided, it is likely that some judges may simply retire, or remain active resulting in a very significant loss of judicial capacity.

Funding for off-site leased space was not provided in our fiscal year 2007 appropriation even though requested. Nevertheless the Administrative Office of the United States Courts (AO) has authorized GSA to seek suitable off-site space and negotiate a lease for senior judges, in accordance with Judicial Conference policy. The search is on-going. We are told, and know from past experience, that securing a lease and preparing chambers will take 6 to 12 months, making it necessary for us to have the funding available in fiscal year 2008.

Forty-four percent, \$1,370,000, of the requested increase over the fiscal year 2007 approved appropriation is to fund programmatic increases for: (1) additional law clerk positions; (2) upgrades to six of the court's automated systems; and (3) two-way video and audio transmission capability between the court and remote sites around the country.

*Additional Law Clerk.*—\$732,000 of the amount requested covers the cost of hiring an additional law clerk for each of the court's active judges for 6 months of fiscal year 2008. The increased workload now requires funding a fourth law clerk. The court presently has funding for only three law clerks for each judge and one secretary. This added funding would provide a fourth law clerk or assistant for each active judge. Indeed, Article III judges serving in the other 12 circuits of the Federal Judiciary have had funding for a fourth law clerk for years.

The Federal Circuit did not previously need parity, but I now ask for this funding for new positions because they are necessary in order to keep up with the sharp increase in the number of appeals filed. After years of steady increases in filings, case filings in fiscal year 2006 alone increased by 14 percent from fiscal year 2005. In addition, we face a sharp rise in the complexity of cases, many involving advanced and emerging technologies of great economic importance for American businesses.

*Upgrade to Automated Systems.*—\$388,000 of the amount requested under program increases is necessary to provide new and improved electronic information technology services to the court, namely (a) improved automated case tracking and management; (b) automated e-filing of briefs by attorneys; (c) e-voting and commenting by judges; (d) automated conflict screening; (e) improved public Web site with posting of all briefs and opinions; and (f) off-site continuity of operations set-up, configuration and support for a back-up computer system at the administrative office site in Missouri.

The court is developing an improved electronic case tracking system, as well as electronic filing, voting, and conflict screening systems. All of these systems are recommended or required by the Judicial Conference. Their development requires hiring contractors, purchasing new equipment, and training court information technology staff. These new systems provide better, more accessible, and faster services for litigating lawyers, judges and judges' staffs, as well as making available to judges and court staff a more efficient method for tracking cases. The automated

conflict screening system reduces the risk of judges inadvertently participating in cases despite a financial conflict, and thus assists in assuring compliance with ethics requirements. It also is required by Judicial Conference policy. The Web site is our primary contact system with attorneys, academics, and the interested public.

Funding is included in this amount for off-site back-up computer equipment necessary to support the continuing operations of the court if a disaster disables our courthouse in Washington, D.C., which is located very near to the White House—a primary target for terrorists.

*Remote Video Conferencing.*—The remaining \$250,000 of the requested amount covers the cost to provide remote video conferencing in one of our three courtrooms, in accordance with Judicial Conference and administrative office policy on funding such capability. Recently, the Judiciary adopted information technology initiatives for reducing the reliance on paper, achieving economy in its business processes, and providing better service to citizens at locations around the country. These initiatives are especially critical to our court because with our nationwide jurisdiction, our lawyers and their clients are scattered all across the country. The request is based on recommendations from the Judicial Conference and the Administrative Office of the United States Courts to provide two-way video and audio transmission between courtrooms and remote sites. With this beneficial technology attorneys can present oral arguments from anywhere in the country and avoid the cost in time and money of traveling to Washington, D.C., and staying here overnight. In addition, the court and citizens benefit greatly from hearing oral arguments which might otherwise not be presented to the court.

I would be pleased, Mr. Chairman, to answer any questions the committee may have or to meet with the committee members or staff about our budget request.

Thank you.

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PREPARED STATEMENT OF JANE A. RESTANI, CHIEF JUDGE, UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. Chairman, members of the committee: I would like to again thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, a court established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's fiscal year 2008 original budget request of \$16,727,000 represented an overall increase of \$690,000 or 4.3 percent over the fiscal year 2007 assumed appropriation of \$16,037,000. This assumed appropriation included an across the board cut of 1 percent. In February, the Court received an appropriation of \$15,825,000. Based on this enacted appropriation, and after a detailed and careful review, the Court's fiscal year 2008 budget request has been reduced to \$16,632,000. This represents an overall increase of 5.1 percent over the enacted fiscal year 2007 appropriation. Despite the reduction, we anticipate that this request will enable the Court to maintain current services and provide for mandatory increases in pay, benefits and other inflationary adjustments to base, including increases in costs paid to GSA for rent and to the Federal Protective Service for building basic and building-specific security surcharges. These security surcharges provide for the Court's pro-rata share of installing, operating and maintaining systems for the critical and necessary security of the Federal Complex in lower Manhattan.

As it has done in the past, the Court continues to budget and expend funds in a conservative and cost effective manner, and will continue to do so to manage within the reduced request. Through the use of its annual appropriation and the Judiciary Information Technology Fund (JITF), the Court continues to promote and implement the objectives set forth in its long range plan for providing access to the Court through the effective and efficient delivery of information to litigants, bar, public, judges and staff. This access is of particular importance in realizing the Court's mission to resolve disputes by: Providing cost effective, courteous and timely service by those affected by the judicial process; providing independent, consistent, fair and impartial interpretation and application of the customs and international trade laws; and fostering improvements in customs and international trade law and practice and improvements in the administration of justice.

The Court continues to make substantial progress in implementing its information technology and cyclical maintenance programs. In fiscal year 2006, the Court: Purchased a new server for a public access terminal that will allow access to the Court's customized version of the Federal Judiciary's Case Management/Electronic Case Files (CM/ECF) System; purchased an additional server for storing utility files

and desktop images; purchased a high speed digital networked copier with scanning and faxing capabilities; cyclically upgraded laptops and purchased desktop computers, monitors and printers for a new judge; upgraded vital existing software applications, continued maintenance agreements for computer hardware and software applications; implemented the on-line system (pay.gov) for the payment of filing fees and the electronic application of CM/ECF for filing appeals and opening cases; upgraded to a new version of CM/ECF; and provided training in the new electronic case opening and filing of appeals applications to attorneys, staff and the public. Additionally, in fiscal year 2006, the Court continued its cyclical maintenance program by refurbishing chambers for a new judge, and offices for a new clerk of court, replacing aging furniture/chairs and upgrading public access corridors.

In fiscal year 2007, the Court has planned to: Purchase new courtroom and conference room technology systems, including an upgraded video conferencing system; replace the Court's Internet server and the server for the Court's library on-line cataloging and acquisition system; replace desktop computer systems, laptops and printers in accordance with the Judiciary's cyclical replacement program; upgrade and support existing software applications; purchase new software applications to ensure the continued operational efficiency of the Court; support Court equipment by the purchase of yearly maintenance agreements; and upgrade copier machines in chambers and clerks' offices. The Court also will expand its developmental and educational programs for staff in the areas of job-related skills and technology.

In fiscal year 2008, the Court remains committed to using its carryforward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and to support the Court's short-term and long-term information technology needs.

Additionally, the Court will continue its commitment to its cyclical replacement and maintenance program for equipment and furniture and for the courthouse. This program not only ensures the integrity of equipment and furnishings, but maximizes the use and functionality of the internal space of the courthouse. Moreover, the fiscal year 2008 request includes funds for the support and maintenance of the security systems upgraded by the Court in fiscal years 1999 through 2005, and the Court's COOP. Lastly, the Court will continue its efforts to address the educational needs of the bar and Court staff.

As I have stated in previous years, the Court remains committed to maintaining its security systems to ensure the protection of those who work in and visit the courthouse. In July, 2005, GSA received Senate approval for fiscal year 2006 funding for the design and construction of a security pavilion for entry into the building. In fiscal year 2006, the Court worked closely with GSA in the design and construction of this entrance pavilion. To that end, the Court, in fiscal year 2006, entered into a Reimbursable Work Authorization with GSA for a non-prospectus security project for the purchase and installation of additional security equipment, including cameras and for the upgrade of the Court's security infrastructure. The design phase was completed in fiscal year 2006 and construction began in fiscal year 2007. The Court will continue in fiscal year 2008 to work in full partnership with GSA during the last phases of construction in order to ensure the total success of this project. GSA projects a completion date in fiscal year 2008.

I would like to again emphasize that the Court remains committed to an approach of conservatively managing its financial resources through sound fiscal, procurement and personnel practices. As a matter of internal operating principles, the Court routinely engages in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding rent, security costs, equipment costs, technology, contractual obligations and personnel. I can assure you that this management approach with respect to the Court's financial affairs is on-going.

Lastly, I would like to personally extend my deepest thanks and appreciation to Congress for recognizing the needs of the courts by providing, in fiscal year 2007, adequate funding to maintain current services so that the courts can remain committed to the administration of justice for all.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the committee requires any additional information, we will be pleased to submit it.

PREPARED STATEMENT OF BARBARA J. ROTHSTEIN, DIRECTOR, FEDERAL JUDICIAL  
CENTER

INTRODUCTION

Mr. Chairman and members of the subcommittee: My name is Barbara J. Rothstein. I have been a U.S. district judge since 1980 and Director of the Federal Judicial Center since September 2003. The Center is the Federal courts' agency whose statutory mandate is to provide continuing education of judges, education of court employees, and research and analysis of Federal judicial processes and procedures.

I appreciate the opportunity to provide you this statement in support of our 2008 appropriations request. Because the Center, like the other judiciary accounts, is new to the subcommittee. I am taking this opportunity to provide a detailed description of our work.

I must stress at the outset that while the Center continues to perform its basic statutory duties, the combination of budget shortfalls and the staff reductions which the shortfalls have necessitated is colliding with an increase in new requirements. In recent years we have been asked by the Judicial Conference to undertake several large research projects, most of which have been to enable the Conference to respond to proposals and inquiries from Congress. For example, in response to a congressional request that the Federal judiciary "document how often courtrooms are actually in use," we are conducting a national study of how courtrooms are scheduled and actually used by Federal district and magistrate judges. In response to recent congressional proposals to streamline the processing of habeas corpus appeals of State capital convictions, the Center was asked by six committees of the Judicial Conference to conduct an extensive empirical study of all State prisoner capital habeas corpus petitions pending in the Federal courts. We are also in the midst of a multi-year study of the impact of the Class Action Fairness Act of 2005 (CAFA) on the resources of the Federal courts. The Center was asked to conduct this study by the Advisory Committee on Civil Rules as it considers whether rules changes may be needed in response to CAFA. In education, last year we were asked to provide enhanced training for judges and staff on new ethics-related guidance and on immigration cases in the circuit courts of appeals. Along with all of these tasks is the need to provide continuing education and study in connection with the changes brought about by the passage of a new bankruptcy statute.

Our ability to meet specific requests like these and, at the same time, continue our regular education and research programs will be jeopardized without at least a small increase in our staff.

2008 REQUEST

Our 2008 request is for \$24,475,000, a 7 percent increase: \$1,066,000 for standard adjustments to base to cover increases in compensation and benefits and inflationary increases in operating costs, and \$535,000 for additional staff (7 FTE) to support the services the Center provides to the Judicial Branch.

The Center's Board, which the Chief Justice chairs, considered our proposed request at its November 2006 meeting and approved it for submission to Congress. I am confident that you will find it responsible and well grounded.

Our 2008 request seeks what is essentially a "current services" budget. The Center has been struggling with having received only one full current services increase since the early 1990s. Over these years, to compensate for appropriations that did not provide full adjustments to base, we reduced our staff 20 percent from 158 to 125. Even as our staff declined, the courts' need for our services has continued to grow. For this reason we are requesting funds to restore 10 (7 FTE) of the most critically needed of the 23 positions we have lost since 2003. Our budget submission provides greater detail on why these positions are needed and the services they will help provide.

The Center is proud of its work to promote improved judicial administration in the courts of the United States, even as its resources have declined. To make the most of our limited resources, we have made great use of educational technologies that reduce the need for travel, and we have carried out rigorous cost controls, internal staff and operational adjustments and reallocations, and personnel cuts. We have reached the point where such measures are no longer viable without impacting the quality of the services we provide. I respectfully urge you to find a way to provide the Center with the modest 7 percent increase it needs in 2008 to continue to provide the educational and analytical services for which judges and their staffs look to the Center.

## ABOUT THE FEDERAL JUDICIAL CENTER

Below I highlight Center activities in 2006, focusing primarily on our education for Federal judges and the staffs of the courts and our research on court and case management. Much of this work involves coordination, cooperation, and consultation with committees of the Judicial Conference of the United States, with the Administrative Office, and with the U.S. Sentencing Commission.

The Center provides orientation programs on substantive legal issues, ethics, and trial and case-management techniques to groups of newly appointed judges.

The Center provides timely information and continuing instruction to help Federal judges and court staff comply with new legislation, Judicial Conference policies, and Supreme Court decisions. We also help courts apply effective leadership and management principles and engage in strategic planning for their near-term and future needs. Examples in this report include expanded ethics training for judges and staff, resources and programs on effective case management, an annual review of cases decided by the Supreme Court, programs for court units on strategic workforce planning, and a courtroom use study, conducted at the behest of the Judicial Conference in response to a congressional request that the Federal judiciary “document how often courtrooms are actually in use.”

## EDUCATION AND TRAINING

More than 2,000 Federal judge participants, 10,000 court staff participants, 40 circuit mediators, and 1,100 Federal defenders and their staff attended Center educational programs in 2006. Those programs included orientation and continuing education programs delivered by a variety of methods. Programs for judges, circuit mediators, Federal defenders, and court unit executives are traditionally in-person presentations, affording interaction on court-management and case-management issues, as well as on substantive and procedural matters. Court staff programs, designed for larger audiences, are typically not travel-based and include audio, video, and online conferences, as well as local training programs that are taught in the court units by Center-trained court staff or individuals with training experience using Center curriculum materials. We provided additional education through satellite broadcasts, streaming audio and video programs, web-based training programs, monographs and manuals, and videocassettes and audiocassettes. Advisory committees of court of appeals, district, magistrate, and bankruptcy judges, as well as court unit executives and staff, help in planning and producing Center education programs and publications.

## EDUCATION PROGRAMS AND MATERIALS FOR JUDGES AND FOR LEGAL STAFF

## SEMINARS AND WORKSHOPS FOR JUDGES, JANUARY 1-DECEMBER 31, 2006

	Number of Programs	Number of Participants
Orientations for newly appointed district judges .....	3	31
Orientations for newly appointed bankruptcy judges .....	3	73
Orientations for newly appointed magistrate judges .....	3	54
Conference for chief district judges .....	1	94
Conference for chief bankruptcy judges .....	1	69
Workshops for district and circuit judges .....	2	90
National workshops for district judges .....	3	377
National workshops for bankruptcy judges .....	2	262
National workshops for magistrate judges .....	2	368
National sentencing policy institute .....	1	72
Special-focus workshops .....	17	416
In-court seminars .....	15	199
TOTAL .....	53	2,105

The Center also held six programs for 1,107 Federal defenders and staff and one program for 43 circuit mediators.

Continuing education programs in 2006 included these national workshops:

—Three for district judges on judicial ethics and the Code of Conduct for U.S. Judges, recent developments in Federal jurisdiction, a review of pertinent decisions from the 2005–2006 Supreme Court term, prosecution of terrorists in Federal courts, 42 U.S.C. § 1983 qualified immunity, management and trial of patent cases, information technology for judges, sentencing post-*Booker*, complex

- criminal case management, the science of drug addiction, an update on the Federal Rules of Evidence, and an update on employment discrimination law;
- two for bankruptcy judges that discussed the Code of Conduct; model rules and practice under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), judicial security, issues involving U.S. trustees under the new BAPCPA, judicial independence and accountability, recent developments in Chapter 7, 11, and 13 cases, U.S. Judicial Conference privacy policy, the dynamics of small business Chapter 11, Chapter 15 issues;
- two for magistrate judges on judicial ethics and the Code of Conduct, electronic discovery, legal and management issues in patent cases, media and the law, IT issues, cell site information and electronic surveillance law, electronic filing, privacy and protective orders, the science of drug addiction, and updates on the Federal Rules of Evidence, habeas corpus issues, Social Security law issues, and 42 U.S.C. § 1983 case law.

Seminars for small groups of judges on particular topics covered case management, intellectual property, international law and litigation, employment law, emerging issues in neuroscience, law and terrorism, advanced mediation strategy, law and genetics, managing capital construction projects, environmental law, immigration law, law and society, and law and science. We conduct many of these programs in collaboration with law schools or other educational institutions, which helps us leverage our funds.

Our conferences for chief district judges and chief bankruptcy judges focused on the roles and responsibilities of the chief judge in financial management and strategic resource planning, judicial security, the courtroom usage study, public attitudes towards the courts, and a program for new chief judges. We conducted both conferences in cooperation with the Administrative Office.

Programs for defender personnel included a national seminar and an appellate writing workshop for Federal defenders, a seminar for Federal defender investigators and paralegals, and a law and technology workshop for Federal defender staff.

The Federal Judicial Television Network (FJTN) is a satellite broadcast network that reaches over 300 court locations. In 2006, we produced:

- Supreme Court: The Term in Review (2005–2006), which analyzed cases likely to affect Federal court dockets;
- Implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Early Experience;
- A New Mandate: Use of Conflicts Screening Software;
- The Sentencing Guidelines Statement of Reasons Form (with the U.S. Sentencing Commission);
- reviews of key bankruptcy decisions in 2005 in the Fourth, Eighth, and Ninth Circuits;
- The Fundamentals of Criminal Pretrial Practice in the Federal Courts; and
- an orientation series for new law clerks, including a program on the basics of employment discrimination law.

Web-based resource pages are available to judges on a variety of topics, such as:

- Managing habeas corpus review of capital convictions, including case-law summaries, case-management procedures, and sample case-management plans, orders, and forms (a similar resource page on federal death penalty cases has been available for several years);
- electronic discovery and evidence, including materials from Center workshops, relevant local rules and sample orders, and a bibliography of case law and articles;
- courtroom technology, including our manual on Effective Use of Courtroom Technology, and our research on videoconferencing in criminal proceedings and animation, simulations, and immersive virtual environmental technology;
- safeguarding personal information in electronic transcripts;
- selected appellate decisions on sentencing post-*Booker*;
- the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, with materials and streaming video and audio formats of our television broadcasts and audio conferences on the act;
- non-prisoner civil pro se litigation, a collection of information from district courts regarding their practices with pro se litigants; and
- streaming videos of recent FJTN broadcasts.

We also have a Web-based resource page of materials to help law clerks learn about their duties and the ethical responsibilities of their position. This includes a new e-learning tutorial.

We released or had in production the following judicial and legal education publications in 2006: The Bail Reform Act of 1984, Third Edition; Copyright Law, Second Edition; The Elements of Case Management: A Pocket Guide for Judges, Second

Edition; Managing Discovery of Electronic Information: A Pocket Guide for Judges; Mediation & Conference Programs in the Federal Courts of Appeals: A Sourcebook for Judges and Lawyers, Second Edition; Patent Law and Practice, Fifth Edition; Post-*Booker* Sentencing—Selected Issues from Appellate Case Law (online only); and The Use of Visiting Judges in the Federal District Courts: A Guide for Judges and Court Personnel (updated 2006)(on line only).

#### EDUCATION PROGRAMS FOR JUDGES AND COURT STAFF

In 2006 we offered several programs that judges and court staff attend together, including:

- A policy institute for district judges, probation and pretrial services officers, and prosecutors and defenders, held in cooperation with the Judicial Conference's Criminal Law Committee, the Sentencing Commission, and the Administrative Office, which included discussions on sentencing policies with representatives of the legislative, executive, and judicial branches;
- our Program for Consultations in Dispute Resolution, which provides on-site assistance to courts that wish to begin or revise alternative dispute resolution programs;
- a 2-day executive team-building program for new chief judges and their clerks of court in conjunction with the Center's national conferences for chief district and bankruptcy judges;
- four strategic planning workshops to help courts develop policy and operational plans specific to their courts;
- an executive leadership seminar for chief judges and their court unit executives;
- a workshop produced in collaboration with the Administrative Office and the General Services Administration to help court teams plan for capital construction projects; and
- at the request of a circuit court, Using Technology to Serve the Appellate Process, an in-court program developed with the Administrative Office, for judges, court unit executives and their staff, Federal defenders, and members of the bar.

#### EDUCATION PROGRAMS AND MATERIALS FOR COURT STAFF

The table below summarizes our programs for the staff of the courts.

#### EDUCATION AND TRAINING PROGRAMS FOR COURT STAFF, JANUARY 1-DECEMBER 31, 2006

	Number of Programs	Number of Participants
Seminars and Workshops (national and regional):		
Clerks of court, clerk's office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians .....	7	893
Probation and pretrial services officers and personnel .....	11	508
Personnel in several categories <sup>1</sup> .....	15	598
TOTAL .....	33	1,999
In-Court Programs (programs using curriculum packages, training guides, and computer-assisted instructional programs):		
Clerks of court, clerk's office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians .....	76	1,876
Probation and pretrial services officers and personnel .....	100	2,967
Personnel in several categories .....	90	1,205
TOTAL .....	266	6,048
Technology-based Programs (videoconferences, audio conferences, online conferences, but not including FJTN broadcasts):		
Clerks of court, clerk's office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians .....	6	1,881
Probation and pretrial services officers .....	8	186
Personnel in several categories .....	1	33
TOTAL .....	15	2,100

EDUCATION AND TRAINING PROGRAMS FOR COURT STAFF, JANUARY 1-DECEMBER 31, 2006—  
Continued

	Number of Programs	Number of Participants
GRAND TOTAL .....	314	10,147

<sup>1</sup> Includes team management workshops for judges and court unit executives.

2006 programs for clerks of court and their staffs included:

- A biennial National Conference for District Court Clerks and Chief Deputy Clerks, which emphasized strategic planning, succession planning, implementing new Judicial Conference policies, management issues, and electronic case filing;
- two management training workshops for supervisors and managers in appellate, district, and bankruptcy courts—a program for those new to the position discussed such topics as performance management, while the program for those with 3 or more years of experience examined staff development and leadership during a crisis;
- several programs with the Administrative Office on Case Management/Electronic Case Filing were facilitated with our staff: three forums—one for district court staff and two for bankruptcy court staff—as well as two web-audio conferences and two audio conferences for bankruptcy courts; and
- an online conference conducted over several months for jury administrators on customer communications and a web-audio conference on best practices.

Conferences and workshops for probation and pretrial services offices included:

- A biennial National Conference for Chief Probation and Pretrial Services Officers on succession planning, management issues, optimizing efficiency through technology, offender supervision methods, and coping with limited budgets;
- an executive team workshop for chief probation and pretrial services officers and their chief deputies that helps leaders analyze district operations and create a strategic plan;
- five regional symposia for experienced supervising officers that dealt with supervision skills, staff motivation, change management and other topics; and
- two in-person workshops for new supervising officers participating in a 2-year supervisors development program that also comprises completion of a 40-hour self-study course and attendance at several web-audio conferences.

New FJTN programs in 2006 for officers included Cyber Crime Investigation and Supervision and Substance Abuse: Methamphetamine, the fourteenth program in a series. The cyber crime program and a rebroadcast of our Financial Investigation series were supplemented with five web-audio conferences.

The Center offers extensive leadership and management education through its Professional Education Institute (PEI). PEI includes courses, programs, web-based resources, and self-development tools to aid leaders and managers at all levels.

The Center has a variety of curriculum packages that Center-trained court staff or staff with training experience use to conduct training in local courthouses. Recent packages for managers in all court units include Planning for Fiscal Management, Planning for Strategic Workforce Management, and Developing a Strategic Court Web Site. A new training guide, Mentoring in the Courts, was published electronically on the Center's intranet site.

New FJTN programs for all court personnel included a program on challenges and possibilities facing the courts, an orientation video on the Center's Federal Court Leadership Program, and a program on mentoring relationships. Four editions of the Court to Court video magazine spotlighting innovative court practices aired in 2006.

#### RESEARCH

The Center conducts empirical and evaluative research on Federal judicial administration and case management, mostly at the request of committees of the Judicial Conference. The results of most of our research are available in print, on our web sites, or in both formats. In 2006, we completed 10 major research projects and continued work on 33 others. This research included:

- Developing and implementing a research design and training protocols for a major study of courtroom use in the district courts as requested by a committee of the Judicial Conference in response to a request from the chair of the Subcommittee on Economic Development, Public Buildings and Emergency Management of the House Committee on Transportation and Infrastructure. This extensive study of how Federal courtrooms are scheduled and actually used is sched-



uled to be completed in June 2008. The study focuses on courtroom use in a random sample of 24 districts during two 3-month time periods in 2007. Three additional districts are included in the study because they face unusual circumstances involving their courtrooms;

- producing a handbook to assist judges in managing class actions under the Class Action Fairness Act of 2005 (CAFA). *Managing Class Action Litigation: A Pocket Guide for Judges* concisely describes the most important and relevant practices for managing class action litigation as set out in the Center's Manual for Complex Litigation, Fourth. The handbook is a product of the Center's multi-year study of the impact of CAFA on Federal judiciary resources as requested by the Advisory Committee on Civil Rules;
- examining a sample of class action activity, including appeals, before and after CAFA went into effect, with the goal of measuring its impact on various stages of litigation, including remand, ruling on pretrial motions, ruling on class certification, trial, settlement, and appeals;
- conducting research and interviews with Federal judges who have recently been assigned terrorism cases in order to develop educational materials to for judges related to managing terrorism cases;
- assisting the Advisory Committee on Civil Rules as it considers a number of possible amendments to the rules of civil procedure;
- conducting a survey of a sample of district court judges and attorneys involved with recently terminated patent cases to identify the case management techniques that judges employed to strengthen the claim construction process;
- following up on research to our 2003 study of eleven courts' experiences as pilots in providing remote public access to electronic criminal case records. The follow-up research included an assessment of remote public access to criminal, civil, and bankruptcy electronic records in the district courts. The research focused on related issues such as redacting prohibited information in documents that are filed in the federal courts;
- examining a sample of over 700 capital habeas appeals of State convictions in response to perceived delay and backlog issues in the processing of these cases;
- developing and publishing a pocket guide to help Federal judges manage the discovery of electronically stored information: *Managing Discovery of Electronic Information: A Pocket Guide for Judges*;
- conducting on-going research to support the Judicial Conference's use of the recently developed statistical case weights for the district courts to assess judgeship needs, including major research to develop new statistical case weights for the bankruptcy courts; and
- supporting the Judicial Conduct and Disability Act Study Committee, appointed by Chief Justice Rehnquist and chaired by Justice Breyer, as it prepared its final report. Earlier work for the committee included reviewing a stratified national sample of complaints filed under 28 U.S.C. § 351.

We also responded to more than 50 informational requests for research-related assistance from the courts, Judicial Conference committees, State and Federal agencies, individuals from academic institutions and associations, and others.

#### PROGRAMS FOR FOREIGN JUDICIAL OFFICIALS

In 1992, the Center's implementing legislation was amended to include a mandate to support the U.S. Government's efforts with promoting the rule of law abroad by providing information about judicial administration and education to the courts of other countries and also to obtain information from foreign judiciaries that might assist U.S. judges manage transnational litigation. To that end, in 2006, the Center conducted 43 briefings for more than 226 foreign judges, court officials, scholars, and students from over 68 different countries; hosted visiting foreign judicial fellows from Brazil and Russia, who studied case management, intellectual property and treaty law, and judicial independence; and provided technical assistance abroad, including conference presentations, in Argentina, Jordan, Kazakhstan, Kosovo, Russia, and Serbia.

No funding for these projects came from the Center's appropriation; they were supported with funds from U.S. Government agencies and host countries (or organizations within them). The Center's two-person International Judicial Relations Office coordinates this activity. The Center also held a conference on international law and litigation for U.S. judges, in collaboration with the American Society of International Law.

## FEDERAL JUDICIAL HISTORY

Congress has told us to conduct, coordinate, and encourage programs related to the history of the Federal judicial branch. Our 3-person Federal judicial history office does so by making available the results of our own historical research, helping judges and the courts with court history projects, and encouraging research and education projects about the judiciary. We have completed six units in our project to develop web-based curriculum materials to help educators teach about the history of the Federal courts, and we have conducted summer institutes that bring together teachers, judges, and scholars to study judicial history. We continue to update and expand the widely used History of the Federal Judiciary website, including the Federal Judges Biographical Directory.

## PUBLICATIONS

Most Center publications are available in print and electronically. In addition to the judicial and legal education publications listed above, the Center also released the following research reports: The Impact of the Class Action Fairness Act of 2005: Second Interim Report to the Judicial Conference Advisory Committee on Civil Rules (on line only); Interim Progress Report on Class Action Fairness Act Study (on line only); Research on Appeals of Attorney-Fee and Merits Decisions (Fed. R. Civ. P. 58(c)(2)) As Presented to the Advisory Committee on Civil Rules in May 2006 (on line only); and Roundtable on the Use of Technology to Facilitate Appearances in Bankruptcy Proceedings.

## FEDERAL JUDICIAL TELEVISION NETWORK

The Center operates the Federal Judicial Television Network (FJTN), a satellite broadcast network with viewing sites in more than 300 Federal court locations, making it the second largest nonmilitary television network in the Federal Government. It transmits Center educational programs as well as those of the Administrative Office and the U.S. Sentencing Commission. In 2006, the FJTN broadcast 98 programs, including 8 live programs. The Center produced 62 of these programs, 4 of which were live. The online FJTN Bulletin is a bimonthly program guide with broadcast schedules, program descriptions, and other news about the network. The Center is also streaming videos to enable judges and court staff to easily access information on their computers.

## MEDIA LIBRARY

The Center's media library contains some 4,000 audio and video programs, including Center programs and almost 800 commercially produced video programs. In 2006, the media library loaned more than 600 programs to Federal judges and judicial branch personnel and sent some 2,000 media programs directly to the courts for them to keep and use in local education and training programs.

## INFORMATION SERVICES

The Center serves as a national clearinghouse for information on Federal judicial administration. In 2006, Information Services Office staff answered hundreds of requests for information from judges and court staff, congressional staff, other government agencies, academics, researchers, the media, and the public.

## FEDERAL JUDICIAL CENTER FOUNDATION

Congress created the Foundation to receive gifts to support Center work in certain specialized areas. Its 7-person board is appointed by the Chief Justice, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. In 2006, Foundation funds helped support our project on alternative dispute resolution and programs for judges on advanced mediation strategy, environmental and natural resources law, emerging issues in neuroscience, law and science, and humanities and science.

## CONCLUSION

Again, I appreciate the opportunity to submit this statement and stand ready to answer any questions you may have.

## PREPARED STATEMENT OF THE UNITED STATES SENTENCING COMMISSION

Chairman Durbin, Ranking Member Brownback, members of the subcommittee, the United States Sentencing Commission thanks you for the opportunity to submit this statement in support of the Commission's appropriation request for fiscal year 2008.

For the past 3 fiscal years, the Commission has detailed for its appropriators the significant impact the Supreme Court's decisions in *Blakely* v. *Washington*<sup>1</sup> and *United States v. Booker*<sup>2</sup> have had not only on the Commission but the entire criminal justice community. Despite changes in case law governing federal sentencing policy, the Commission has continued to fulfill its statutory mission as set forth in the Sentencing Reform Act of 1984. Full funding of its fiscal year 2008 request will ensure that the Commission can continue to fulfill its statutory responsibilities.

## RESOURCES REQUESTED

The Commission is requesting \$15,477,000 for fiscal year 2008, representing a 6 percent increase over allotted funding for fiscal year 2007. The Commission recognizes that Congress sent a strong message in passing the fiscal year 2007 continuing funding resolution that agencies should use allotted resources carefully. The Commission accordingly has tailored its request for funding to reflect the Commission's intent to be fiscally conservative while maintaining the resources it needs to meet its statutory mission.

## JUSTIFICATION FOR THE COMMISSION'S APPROPRIATION REQUEST

The statutory duties of the Commission include, but are not limited to: developing appropriate guideline penalties for new and existing crimes; collecting, analyzing, and reporting federal sentencing statistics and trends; conducting research on sentencing issues in its capacity as the clearinghouse of federal sentencing data; and providing training on sentencing issues to federal judges, probation officers, law clerks, staff attorneys, defense attorneys, prosecutors, and others in the criminal justice community.

The Supreme Court's decisions in *Blakely* and *Booker* did not alter these core missions. In fact, the Supreme Court in *Booker* reaffirmed these statutory obligations by explaining that the Commission's post-*Booker* mission remained "writing guidelines, collecting information about district court sentencing decisions, undertaking research, and revising the guidelines accordingly."<sup>3</sup> The Supreme Court explained further that the "Commission will continue to collect and study appellate court decisionmaking. It will continue to modify its guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices."<sup>4</sup>

Over the past 3 fiscal years, the Commission has worked diligently to maximize resources overall and appreciates the funding and support it has received from Congress. The Commission, therefore, has tailored its fiscal year 2008 funding request to reflect its continued commitment to efficiently yet effectively meet its core mission.

## SENTENCING POLICY DEVELOPMENT AND GUIDELINE PROMULGATION

The Commission promulgated a number of amendments to the guidelines in several substantive areas of criminal law, including immigration, steroids, terrorism, firearms, and intellectual property, that became effective in 2006. For the amendment cycle ending on May 1, 2007, the Commission also is considering a number of guideline amendments, including recommendations for penalty modifications for transportation, sex, terrorism, and drug offenses, and the fraudulent acquisition or unauthorized disclosure of phone records. These proposed amendments reflect the Commission's response to the USA Patriot Improvement and Reauthorization Act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Adam Walsh Child Protection and Safety Act of 2006, the Stop Counterfeiting in Manufactured Goods Act, the Telephone Records and Privacy Protection Act of 2006, and a number of directives and changes to the criminal law made by the 109th Congress, as well as input received from the criminal justice community, the resolution of circuit conflicts on sentencing application issues, and other policy priorities of the Commission.

<sup>1</sup> 542 U.S. 296 (2004).

<sup>2</sup> 543 U.S. 220 (2005).

<sup>3</sup> 543 U.S. at 264.

<sup>4</sup> 543 U.S. at 263.

Consistent with the requirements of the Sentencing Reform Act of 1984, the Commission's process for sentencing policy development and guideline promulgation continues to include significant outreach to, and input from, criminal justice stakeholders, as well as the review of pertinent literature, data, and case law. The following examples of the Commission's work during the current amendment cycle illustrate this process.

As part of its ongoing study of the criminal history guidelines and its consideration of how the guidelines might be simplified overall, the Commission held 2 days of meetings to discuss these topics with over 40 individuals, including federal judges, probation officers, defense attorneys, Department of Justice personnel, and academics. In addition, as part of its review of the guidelines with respect to cocaine offenses, the Commission held a day-long hearing to elicit testimony from representatives of the criminal justice community, including law enforcement, medical and treatment experts, academics, and community groups among others. The hearing provided a record for the criminal justice community to use as it debates the future of federal cocaine sentencing policy. The Commission also invited representatives of the Department of Justice, the defense bar, and industry groups to provide input on topics such as immigration penalties, sex offenses, and intellectual property offenses during a public meeting of the Commission.

As the foregoing examples illustrate, the federal sentencing guidelines are a product of a collaborative and comprehensive process as required by the Sentencing Reform Act of 1984, including consideration of factors set forth in 18 U.S.C. § 3553(a). Full funding of its fiscal year 2008 request will ensure that the Commission can continue to meet requirements of the Sentencing Reform Act of 1984 with respect to sentencing policy development and guideline promulgation.

#### COLLECTING, ANALYZING AND REPORTING SENTENCING DATA

The Supreme Court's recent jurisprudence has had a significant impact on the Commission's data collection, analysis, and reporting efforts. For over 70,000 federal felony and Class A misdemeanor criminal cases annually, the Commission extracts information from five documents that the courts are required to send to the Commission pursuant to 28 U.S.C. § 994(w).<sup>5</sup>

Immediately after the 2004 *Blakely* decision, the Commission recognized that one of the most critical functions it could perform was reporting the most timely and accurate sentencing data available. The Commission therefore began to refine its efforts in this area so that it could produce data beyond its statutorily required annual reports. By the time the Supreme Court issued its *Booker* decision in January 2005, the Commission had revised its data collection and reporting process so that it could provide "real-time" data about the effects of the *Booker* decision on national sentencing practices.

The Commission further refined its data collection, analysis and reporting efforts throughout fiscal year 2006 to maximize the information it provides to the criminal justice community. It now provides detailed quarterly national sentencing data similar to the format and types of data produced in the Commission's year-end annual reports. Moreover, in February 2007, the Commission published on its website its Fiscal Year 2006 Annual Report and Sourcebook. These materials reflect the Commission's analysis of over 72,000 cases. This represents approximately 24,000 more cases than the Commission processed in fiscal year 1997, showing a 50-percent increase in caseload over a 10-year period. The Commission's fiscal year 2008 funding request is designed to maintain personnel and other resources in the key areas of data collection, data analysis, and research. This funding also will ensure that the Commission can keep pace with increased demands made of its data collection and analysis efforts.

#### *Information Technology Issues Associated with Data Collection, Analysis, and Reporting*

The Commission has developed and implemented an electronic document submission system that enables sentencing courts to submit electronically the five statutorily required sentencing documents directly to the Commission. This has greatly alleviated the need to spend court resources on copying, bundling, and mailing hard copies. Currently, 80 of the 94 judicial districts are using the system, with another 11 slated to come on-line within the coming months. The Commission is hopeful that all 94 districts will be using the system by the end of fiscal year 2007.

<sup>5</sup>Section 994(w) of title 28, United States Code, requires the chief judge of each district court, within 30 days of entry of judgment, to provide the Commission with: The charging document; the written plea agreement (if any); the Presentence Report; the judgment and commitment order; and the statement of reasons form.

The electronic document submission system has enabled the Commission to take significant steps toward automating data collection and analysis. Increased automation contributes significantly to the success of the Commission's statutory missions and offers significant benefits to the entire criminal justice community. Automation better allows the Commission to provide the independent and objective analysis and reporting of federal sentencing practices contemplated by the Sentencing Reform Act. Automated data collection and analysis enable the Commission to provide even more detailed and accurate data on national sentencing trends to the criminal justice community. An automated system allows the Commission to work closely with other entities in the criminal justice community in creating an unparalleled system of document receipt and data reporting that promotes best practices throughout the system. By increasing internal efficiencies, the Commission is able to dedicate more resources to research-oriented tasks.

The Commission is pleased that Congress has funded its efforts to become fully automated. During fiscal year 2008, the Commission intends to evaluate the technological base it has built and, working with other entities in the criminal justice community, determine the next steps for moving forward technologically. Full funding of its fiscal year 2008 request will ensure that the Commission's automation systems work efficiently and effectively and allow the Commission to further develop its automation resources.

#### *Increased Demands for Commission Work Product from Congress*

In addition to the new demands for national data placed on the Commission by the Supreme Court's recent decisions, the Commission also continues to experience increased demand for its work product from Congress. In addition to providing its quarterly and annual data reports on national sentencing practices, the Commission is required to assist Congress in assessing the impact proposed criminal legislation will have on the federal prison population. These assessments often are complex, time-sensitive, and require highly specialized Commission resources. Throughout the past 3 fiscal years, the Commission also has experienced an increase in more general requests for information from Congress on issues such as drugs, gangs, immigration, and sex offenses. The Commission anticipates an even higher volume of such requests throughout fiscal year 2008 and looks forward to fulfilling these requests in a timely and thorough manner.

#### CONDUCTING RESEARCH

Research is a critical component of the Commission's overall mission. Congress directed the Commission to establish a research agenda as part of its role as the clearinghouse on federal sentencing statistics and policy. As such, the Commission has undertaken a number of important research projects. In response to the recent Supreme Court decisions and as a result of the Commission's success with increasing its data collection and analysis efficiencies, the Commission has accelerated its research agenda. In fiscal years 2006 and 2007, the Commission undertook a number of internal and external reports that provide detailed examinations of key policy areas such as immigration, drugs, and firearms offenses. Also in fiscal year 2006, the Commission released a comprehensive report on the impact of *Booker* on federal sentencing.

In fiscal year 2007, the Commission also anticipates reviewing and releasing reports on federal cocaine policy and various components of offender criminal history, along with review of other reports drafted to support the Commission's guideline amendment work. These reports are crucial to the Commission's overall objective of promulgating reasoned and well-informed guideline and policy statement amendments.

In fiscal year 2008, the Commission expects that its research agenda will include additional reports associated with its policy work and the continuation of its comprehensive review of criminal history, including more reports based on its nationally recognized recidivism database. The Commission also anticipates undertaking several research and data analysis projects of interest to the criminal justice community. Full funding of its fiscal year 2008 request will allow the Commission to pursue its commitments to providing the criminal justice community with the most comprehensive and thorough reports on federal sentencing practices.

#### TRAINING AND OUTREACH

The Commission is dedicated to providing specialized guideline training and technical assistance to federal judges, probation officers, law clerks, staff attorneys, prosecutors, and defense attorneys by providing educational programs throughout the year. The Commission continues to expand its training and outreach programs

to ensure the criminal justice community has the tools necessary to operate in a post-*Booker* sentencing world. Throughout the remainder of fiscal year 2007, the Commission anticipates holding training programs in all 12 circuits and a majority of the judicial districts. The Commission will co-host an annual training program for several hundred participants in May 2007 in Salt Lake City, Utah, and in May 2008 in Florida. Full funding of its fiscal year 2008 request will allow the Commission to continue its expanded training program in all 12 circuits and its attendance at numerous academic and judicial programs and symposia on federal sentencing.

#### SUMMARY

The Commission is uniquely positioned to assist all three branches of government in ensuring sound and just federal sentencing policy. An independent agency housed in the Judicial branch, the Commission is an expert bipartisan body of federal judges, individuals with varied experience in the federal criminal justice system, and ex-officio representatives of the Executive Branch whose work on sentencing policy must be reviewed by Congress. In short, the Commission is at the crossroads of where the three branches of government intersect to determine federal sentencing policy.

The Commission has worked hard and performed well with the resources available, and it appreciates the funding it has received from Congress to meet its increasing needs. Full funding of the Commission's fiscal year 2008 request will ensure that the Commission continues to fulfill its statutory missions to develop appropriate guideline penalties, collect, analyze, and report federal sentencing statistics and trends, conduct research on sentencing issues, and provide training to the federal criminal justice community. The Commission respectfully requests that Congress support fully the Commission's fiscal year 2008 appropriation request of \$15,477,000 so that it can continue its role as a leader in federal sentencing policy.

Senator DURBIN. Mr. Duff.

#### STATEMENT OF JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. DUFF. Good afternoon, Chairman Durbin and Senator Allard. I'm very pleased to present the budget request for the Administrative Office of the U.S. Courts today.

#### FISCAL YEAR 2007 FUNDING

I'd like to join Judge Gibbons in thanking you for the additional funding for 2007 that you gave to the judiciary above a hard freeze. We certainly appreciate the priority shown to the judiciary.

This funding will support current onboard staffing levels and base operating requirements, and also allow some staffing increases in courts where workload is heavily impacted by immigration and other law enforcement initiatives.

Although I have appeared at several budget hearings before, when I was administrative assistant to Chief Justice Rehnquist, this is the first time I've been permitted to speak at one of these hearings, and I hope you don't conclude that there was a good reason for that.

I'm honored to be here on behalf of the Administrative Office of the U.S. Courts and the court system. I did work closely with this subcommittee's predecessor, the Commerce, Justice, State, Judiciary Subcommittee, and I look forward to working with you in the newly formed Financial Services and General Government Subcommittee.

#### ROLE OF THE ADMINISTRATIVE OFFICE

This past July, Chief Justice Roberts appointed me to be the seventh Director of the Administrative Office of the U.S. Courts. The AO was created by Congress in 1939, and its mission is to assist

Federal courts in fulfilling the mission to provide equal justice under the law.

The AO is a unique entity in the Federal Government. It's not the sole headquarters for the courts. The Federal courts are, to some degree, decentralized. But the AO does provide administrative, legal, financial management, program, security, information technology, and other support services, to all Federal courts. It also provides support and staff counsel to the Judicial Conference of the United States and its 25 committees. And it helps implement Judicial Conference policies, as well as applicable Federal statutes and regulations.

The AO has matured over the years to meet the changing needs of the judicial branch, but service to the courts has been, and remains, our basic mission at the AO.

This year being a transition year at the AO, it's a natural time to ensure that the structure and services provided by the Administrative Office are cost effective and that they address the needs of the courts. But even if this period of transition were not a convenient time to take a look at our services and our structure, it's likely that budget constraints would have required us to do so.

I am assembling a small advisory group of judges and leaders from court personnel and within the AO to assist me in an internal review of the Administrative Office of the Courts to ensure that we are structured properly and efficiently to meet the needs of the courts and to determine if any internal adjustments are needed to become more efficient.

#### COST CONTAINMENT

Cost containment within the AO is also an important priority. And when I came onboard last July, one of the things we did was to put in place a hiring freeze within the AO which continues. We have not sought to replace vacancies from outside the organization. We've tried to backfill within the organization, and, I think, have obtained substantial savings as a result of that effort. There have been exceptions to it, but they are the exception and not the rule.

#### RELATIONSHIP WITH GENERAL SERVICES ADMINISTRATION

On another front—Senator Allard, you referred to this—I think it's fair to say that relations between the courts and the GSA have been strained over the past few years. I'm very pleased to report some progress with GSA. We've had a number of meetings and discussions with the new Administrator at GSA. We are getting to the bottom of these rent overcharges that have occurred. What I'm most pleased about is that the nature of the dialogue and the tone of the dialogue have improved. We're sitting across the table from each other and working through some of these problems. We've exposed a number of the rent overcharges and have been given credit for them. The total amount of these is over \$50 million.

Another thing we're doing with GSA is trying to devise a new formula for going forward on our rent. The current basis for determining rent is based on a fair market value, and there's been a lot of room for play in that. And that's where we have identified some of these overcharges.

We're working with them on a new formula for making rent calculations, going forward, more attuned to a return-on-investment formula, which gives us some predictability, which is great for us, with regard to planning—budget planning, and, as I say, takes some of the play out of the rent calculations that have been troublesome to us.

The goal, frankly, is to come to you in the future with a solution to these problems, rather than to put into your lap a significant problem that requires your intervention for a solution. We're very grateful, however, having said that, for your intervention and the pressure you've helped bring to bear on a very significant problem within the judiciary. It's been extremely helpful and we appreciate it, Senator Allard.

#### FISCAL YEAR 2008 REQUEST

My written testimony, which I ask be included in the hearing record, provides several examples of the wide array of services and support that the AO provides to the Federal judiciary. I'm going to limit the remainder of my remarks this afternoon to the specific budget request, the fiscal year 2008 budget request for the AO.

The fiscal year 2008 appropriations request for the Administrative Office of the U.S. Courts is \$78,536,000. This is an increase of \$6.2 million over the 2007 enacted level. And, while the increase we're seeking may appear to be significant, it actually represents a no-growth current-services budget. Mr. Chairman, the AO's appropriation comprises less than 2 percent of the judiciary's total budget.

In addition to the appropriation provided by this subcommittee, the AO receives nonappropriated funds from fee collections and carryover balances, as well as reimbursements from other judiciary accounts for information technology development and support services that are in direct support of the courts, and the court security and defender services programs. The principal reason for the increase in appropriated funds requested for the AO is to replace nonappropriated funds that were used to finance the fiscal year 2007 financial plan, but which are expected to decline in fiscal year 2008. And mostly, there, we're talking about reductions in bankruptcy filings. The filing fees from bankruptcy filings funded significantly our nonappropriated funds in the past. And, because of the anticipated drop off in those nonappropriated funds, we are seeking more in the way of appropriated funds.

I would emphasize that we are requesting no program increases in our budget request. I would also emphasize that of course we're going to keep you apprised and work closely with your staff if our projections of fee collections and carryover estimates change. If we experience and obtain additional fee collections from those which we've projected, we'll certainly inform you right away of that fact, so adjustments to the AO's budget request can be made accordingly.

#### PREPARED STATEMENT

Chairman Durbin and members of the subcommittee, I recognize that fiscal year 2008 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of agencies



and programs that are under your review. I pledge to you that we will work very closely with you, and we treat, as seriously as you do, cost-containment efforts and initiatives. And we look forward to working with you and your staff.

Thank you very much.

[The statement follows:]

#### PREPARED STATEMENT OF JAMES C. DUFF

##### INTRODUCTION

Chairman Durbin, Senator Brownback, and members of the subcommittee, I am pleased to appear before you this afternoon to present the fiscal year 2008 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.

Before I begin, I would like to join Judge Gibbons in thanking you and your committee for the support you provided the Judiciary in H.J. Res. 20, the final 2007 Continuing Resolution. We deeply appreciate the additional funding above a hard freeze provided the Judiciary. It will support current on-board staffing levels and base operating requirements, and allow some staffing increases in courts whose workload has been heavily impacted by immigration and other law enforcement initiatives.

While this is my first official appearance before Congress, from 1996 to 2000 I served Chief Justice Rehnquist as his administrative assistant and chief of staff and supported Justices Souter and Kennedy in their appearances before then-Chairman Gregg and the Commerce, Justice, State, and the Judiciary Appropriations Subcommittee. I look forward to working with you under the newly formed Financial Services and General Government Appropriations Subcommittee, to answer any questions you might have, and to represent as clearly as I can the important needs of the Federal Judiciary.

##### ROLE OF THE ADMINISTRATIVE OFFICE

In July 2006, I accepted the appointment of Chief Justice Roberts to become the 7th Director of the Administrative Office of the U.S. Courts. Created by Congress in 1939 to assist the Federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO is not the sole headquarters for the courts. The Federal court system is decentralized, although the AO provides administrative, legal, financial, management, program, security, information technology and other support services to all Federal courts. It provides support and staff counsel to the Judicial Conference of the United States and its 25 committees, and it helps implement Judicial Conference policies as well as applicable Federal statutes and regulations. The AO also coordinates Judiciary-wide efforts to improve communications, information technology, program leadership, and administration of the courts. Our administrators, accountants, systems engineers, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the Federal courts nationwide. The AO staff also responds to congressional inquiries, provides information on pending legislation, and prepares congressionally mandated reports.

The AO has evolved and matured over the years to meet the changing needs of the judicial branch. Service to the courts, however, has been and remains our basic mission. As its new director, I want to ensure that the structure and services provided by the AO are appropriate and cost-effective and that they address the needs of the courts. I am assembling a small advisory group of judges and leaders from court personnel to assist me and our new deputy director—Jill Sayenga—in a review of our structure. Ms. Sayenga brings with her 18 years of experience in the Federal court system and will be a great asset to the AO. We are currently engaged in an examination of our core mission as defined by statutes and directives from the Judicial Conference to determine if internal adjustments are needed within the AO to improve efficiency and responsiveness to the courts.

## WORKING WITH OUR EXECUTIVE BRANCH PARTNERS

Relations between the General Services Administration (GSA) and the AO in recent years have been strained. During the past 8 months I have served as director, I have met many times with Ms. Lurita Doan, the new GSA administrator, and the new commissioner of the Public Buildings Service, David Winstead, to work on solutions to the issues confronting our organizations and identify our mutual goals and responsibilities. I am pleased to report significant progress in the relationship between the AO and GSA. We are working together on our extensive nationwide effort to validate GSA space assignment and classification records, and to reconcile them with actual rent bills. In addition, we are currently working on significant changes in how GSA determines or calculates courthouse rents. We both recognize the important responsibility our agencies have in being good stewards of limited federal funds. Our negotiations reflect the partnership that is being forged and my firm belief that developing cooperative relationships and maintaining open lines of communication with our Executive Branch partners is crucial to our ability to solve problems as they arise. It is our mutual goal to present solutions to Congress to the issues facing us, and not delivering problems to you.

*Judicial Security*

Another important Executive Branch partnership we have is with the United States Marshals Service (USMS). By statute, and under a Memorandum of Agreement with the Attorney General, the Congress appropriates funds to the Judiciary to provide security inside Federal courthouses, and these funds are administered by the USMS for the Judiciary through its judicial security program. A close working relationship between the AO and the USMS is essential to ensure the protection of the judicial process, including litigants, judges, and the public. In addition, it is critical that the administration support, and Congress provide, the resources necessary for the USMS to fulfill adequately its statutory mission.

John Clark, a career U.S. Marshal, and relatively new director of the USMS, has been very accessible to the AO and we are building a stronger working relationship with the USMS. Director Clark has attended each of the meetings of the Judicial Conference's Judicial Security Committee since it was created in January 2006 and has encouraged his senior staff to meet regularly with AO staff to discuss issues and implement policies regarding judicial security. This improved relationship with the USMS will enhance the security of the Judiciary.

Following the murders of two members of U.S. District Court Judge Joan Lefkow's family in their Chicago home, the Administrative Office worked with Director Clark and the Appropriations Committees—especially you Chairman Durbin—to obtain supplemental funding for the USMS to enhance the off-site security of Federal judges. Part of the supplemental funding was used by the USMS to establish a home-intrusion detection systems program for all Federal judges. The AO and the USMS worked together to develop a program to provide home alarm systems to Federal judges who wanted one. To date, nearly 1,600 systems have been installed or are scheduled for installation in judges' homes by a USMS national security vendor.

## THE ADMINISTRATIVE OFFICE—IN SERVICE AND SUPPORT

Each day, as judges and court employees across the country work to provide citizens with due consideration and equal justice under the law, the Administrative Office supports that commitment by designing and carrying out programs and initiatives in a manner that reflects good stewardship of public funds. From the implementation of cost-containment initiatives to carrying out congressional mandates, AO staff collaborate with the courts to design and implement smart business practices. I would like to highlight just a few.

*Judiciary Internal Oversight and Review*

The Administrative Office plays a vital role in the Judiciary's system of oversight and review to promote the stewardship of resources, effective program management, and the integrity of operations within the Third Branch. The AO has been conducting financial audits since Congress first authorized this function in 1975.

The AO's comprehensive audit program complies with generally accepted government audit standards. In 2006, the AO conducted 105 financial and administrative audits of Judiciary funds, financial activities, operations and systems. Financial audits covering all court units are conducted by an independent certified public accounting firm under contract with and the direction of the Office of Audit on a 4-year cycle for most courts, and on a 2½ year cycle for larger courts. Other audits cover funds such as the Court Registry Investment System, Judiciary Retirement Trust Funds, Chapter 7 trustees, Criminal Justice Act (CJA) grantees, contracts and

financial systems, and special audits such as when there is a change of court unit executive.

In addition, on-site programmatic reviews are conducted in the courts. These specific reviews may focus on things such as program operations and management, human resources management, procurement, information technology operations, security, continuity of operations planning and disaster preparedness, as well as jury management and court reporting in district courts. During fiscal year 2006, on-site reviews covering program and technical operations were conducted in three appellate courts, seven district courts, four bankruptcy courts, 14 Federal defender organizations, and 12 probation and pretrial services offices.

The AO provides investigatory services for addressing allegations of waste, fraud, or abuse. This program was approved by the Judicial Conference in 1988, and the Judicial Conference's Committee on the AO oversees the AO's performance of this function. In addition, the AO has a liaison with the Department of Justice's Criminal Division, the Government Accountability Office's FraudNet operation, and others for the referral and appropriate resolution of allegations of impropriety.

#### *Ethics Compliance*

The Judiciary also has mechanisms in place to address allegations of judicial misconduct or disability. Like Congress, the Judiciary addresses conduct and ethical matters with self-regulating policies and through committees of Federal judges. Accountability is a core value of the Judiciary, and the Judiciary's self-imposed standards of conduct are stringent.

Last September, the Judicial Conference adopted two policies to aid judges in complying with established ethical obligations. The first requires all Federal courts to use conflict-checking software to assist judges in identifying cases in which they could have a financial conflict of interest and should therefore recuse themselves. While automated screening is not foolproof, it is an efficient and effective supplement to a judicial officer's individualized review. The second outlines new disclosure requirements for those who provide privately-funded educational programs for judges and the judges who attend such programs. The policy requires seminar sponsors to disclose sources of funding, topics, and names of speakers. Judges are barred from accepting reimbursements unless the program providers have made the required disclosures. Judges must report their attendance within 30 days after the program. Disclosures already are available on the Internet. The Administrative Office is actively engaged in the implementation of these policies. Working closely with the relevant Judicial Conference committees, AO staff drafted guidelines, developed training programs, and created automated reporting systems to support these new Conference policy initiatives.

#### *Remote Access for Officers Working in the Community*

Through its Office of Probation and Pretrial Services, the AO continues to provide probation and pretrial services officers with various wireless technologies to enhance their productivity while in the community interacting with defendants and offenders. Officers now have all critical information about persons under their supervision at their fingertips via "smart phones" and wireless hand-held devices and laptops. Not only do officers working in the community have access to all of the information that is available in their offices, they also are able to transmit information from remote locations back to the office. These technologies save travel time and expenses and make it possible for officers to spend more time in the community supervising offenders. Using remote technology was imperative to our success in tracking offenders in the aftermath of the Gulf Coast hurricanes.

#### *Case Budgeting*

Recently issued Judiciary guidelines encourage courts to utilize case budgeting for high-cost Criminal Justice Act (CJA) panel attorney representations. These high-cost representations total less than 3 percent of the caseload but account for about one-third of the panel attorney expenses. To assist in this effort the Second, Sixth, and Ninth circuits were selected to participate in a pilot project and each will receive one position to support the case-budgeting process in courts within these circuits for up to 3 years. The AO has contracted with two expert litigators who have substantial case-budgeting experience to assist judges in assessing whether Criminal Justice Act case budget estimates are reasonable. The Defender Services appropriation is one of the fastest growing accounts within the Judiciary and we are hopeful that case budgeting will be helpful in controlling expenditures in high-cost—usually capital case-representations.

*Report on the Impact of the Supreme Court Booker Case on the Judiciary's Workload*

The Supreme Court, in *Blakely v. Washington*, 542 U.S. 296 (2004) (*Blakely*), invalidated a sentence imposed by a State court under the State's sentencing guidelines system. In doing so, it raised questions about the constitutionality of the Federal sentencing guidelines system. The Supreme Court decision in *United States v. Booker* 543 U.S. 220 (2005) (*Booker*), issued a year later, rendered the Federal sentencing guidelines advisory in nature, rather than mandatory.

In a June 2006 report requested by the House and Senate Appropriations Committees, the AO documented that the Supreme Court decisions in *Blakely* and *Booker*, had significantly impacted the workload of the Federal courts, as thousands of convicted defendants filed appeals or habeas corpus petitions contesting the legality of their sentences and thousands of cases already on appeal were remanded back to the trial courts for resentencing. This detailed analysis of the impact the *Blakely/Booker* decisions have had on the workload of the appeals and district courts, Federal defenders, and probation officers has been extremely helpful in determining resource needs and the allocation of appropriated funds.

*Increased Productivity Through Information Technology Systems*

Another key AO responsibility is to lead and manage the development, implementation, and support of new information technology systems that will enhance the management and processing of information and the performance of court business functions. By the end of 2006, the Federal courts' Case Management Electronic Case Files (CM/ECF) system was operating in all bankruptcy courts, and 92 of 94 district courts, as well as the Federal Court of Claims and the U.S. Court of International Trade. The appellate courts' new case management system is scheduled to be fully deployed in nearly all regional courts of appeals by the end of this year.

The prototype system for what is now CM/ECF was launched in 1995 when a team from the AO helped the U.S. District Court in the Northern District of Ohio manage more than 5,000 document-intensive maritime asbestos cases. That court faced up to 10,000 new pleadings a week—a workload that quickly became unmanageable. Together, the team developed a system that allowed attorneys to file and retrieve documents and receive official notices electronically. A year later, the Bankruptcy Court in the Southern District of New York began live operations with a similar system that the AO had tailored for bankruptcy court needs. That court faced some of the early mega-bankruptcies, and was inundated with paper. Those early prototype efforts led to the system that now provides information on 28 million Federal court cases and serves hundreds of thousands of attorneys and litigants nationwide. Through the Judiciary's Public Access to Court Electronic Records (PACER) program most, if not all, appellate, district, and bankruptcy courts' websites contained the material now required by the E-Government Act of 2002 long before its enactment.

The implementation of CM/ECF is the largest system development and implementation effort ever undertaken in the Judiciary and is clearly one of our greatest success stories. More than 415,000 attorneys have registered and been trained in CM/ECF and on average, nearly 200,000 docket entries are made each workday. However, during one extraordinary period—the first weeks of October 2005—that volume more than doubled. And through the PACER system, CM/ECF answers more than 1,000,000 queries per workday. The system provides lawyers, the media, and any interested party with access to important case documents from anywhere, at any time, and replaces what had previously been a burdensome, labor- and paper-intensive responsibility. Attorneys have praised the systems, noting that they are easy to use, reduce their service and copying expenses, and provide quick notice of actions. It is clear that a robust information technology program makes the Federal Judiciary more accessible and efficient.

*Veterans' Court of Appeals*

Recognizing the success of the Judiciary's Case Management/Electronic Case Filing System and looking for the cost efficiency of adapting our new appeals court system to one that could serve their needs, the U.S. Court of Appeals for Veterans Claims approached the AO for assistance. After ensuring that our system could be adapted for their use without compromising our own security, and with the approval of the Judicial Conference, the AO entered into a Memorandum of Understanding to train and support the court in its examination and implementation of the product. The Military Construction Appropriations Subcommittees and the Veterans Affairs Committees in the House and Senate were very supportive of this agreement and the savings this partnership can bring to the Federal Government.

#### *IT Cost Containment Initiatives*

During 2006, the AO also continued its efforts to assist the Judicial Conference Committees in developing and implementing cost containment strategies that will hold down costs while maintaining the quality of judicial services. Our efforts in the area of Information Technology are one example where we have been focusing on ways to leverage limited funds to deliver useful technologies while reducing operating costs.

The Information Technology Committee was asked by the Executive Committee of the Judicial Conference to examine how we deploy computer servers for running and backing up national applications—such as our accounting, probation case management, electronic case filing, e-mail, and jury management systems. Our model had been to put servers in each court headquarters for each of those national applications. From a technical standpoint, such a server deployment model was not always necessary.

So, under the direction of the IT Committee, the AO undertook a comprehensive study—working together with many program offices, a group of court unit executives, IT professionals and a judge—to determine how best to consolidate and share the thousands of servers deployed throughout our court system. The AO is now in the process of implementing some of their recommendations.

In the probation/pretrial services area, we are in the process of consolidating 95 servers into two locations, which is projected to save \$2 to \$3 million over 4 years in equipment, staff support, and maintenance costs. In jury management, the working group recommended eliminating separate servers for each court by consolidating jury management onto the courts' CM/ECF servers. This is projected to save about \$4 million over 5 years. We have also saved significant dollars in the courts by obtaining enterprise-wide licenses for such software as Adobe Acrobat Professional, instead of each court purchasing its own.

#### ADMINISTRATIVE OFFICE COST CONTAINMENT

Cost containment is also an important priority within the Administrative Office. When I became director in July, in an effort to control staffing costs, I restricted recruitment actions for filling vacant positions to internal AO sources. Any exceptions for external recruitment are scrutinized carefully by an executive review committee and require my approval. And, as part of the larger comprehensive review of the AO now ongoing, we will also be looking at AO spending, staffing, and operations to ensure that the agency is carrying out the business of the Judiciary in the most efficient and effective manner.

In addition to tight staffing restrictions, during 2006 the AO implemented a number of other internal cost-containment initiatives such as: Shifting many publications to electronic format whenever possible; reducing library materials in favor of electronic resources; and replacing desktop automation equipment based on necessity rather than on a cyclical basis.

#### ADMINISTRATIVE OFFICE BUDGET REQUEST

The fiscal year 2008 appropriations request for the Administrative Office of the U.S. Courts is \$78,536,000, representing an increase of \$6,159,000, or 8.5 percent, over fiscal year 2007 available appropriations. While the percentage increase in appropriations we are seeking may appear significant, overall it represents a no-growth, current services budget request.

The AO's appropriation comprises less than 2 percent of the Judiciary's total budget. In addition to the appropriation provided by this committee, the AO receives non-appropriated funds from sources such as fee collections and carryover balances to offset appropriation requirements. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security programs, and defender services.

The principal reason for the large increase in appropriated funds requested for the AO in fiscal year 2008 is to replace non-appropriated funds (fee/carryover) that were used to finance the fiscal year 2007 financial plan, but which are expected to decline in fiscal year 2008 mostly because of reductions in bankruptcy filings. Specifically, the AO requires \$6.2 million in base adjustments to maintain current services. This includes inflationary adjustments and increased costs for recurring requirements, such as communications, service agreements, and supplies. The AO requests no program increases, and during fiscal year 2007, I expect our hiring freeze will result in the reduction of 10 FTE's below fiscal year 2006 staffing. We will keep you apprised of actual fee collections and carryover estimates as the year progresses. If collections surpass our estimates, the amount we are requesting could be reduced.

However, if declining fee and carryover projections materialize, and they are not replaced with direct appropriated funds, we will be forced to reduce current on-board staffing. These staffing losses would come on top of the 10 FTE's reduced in the hiring freeze this year. This would, in turn, adversely affect our ability to carry out the AO's statutory responsibilities and serve the courts.

#### CONCLUSION

Chairman Durbin, Senator Brownback, members of the subcommittee, in the interest of time, I have shared with you only a few examples of the wide array of services and support the Administrative Office provides the Federal Judiciary, but I hope you will understand more about the function and responsibilities of our agency during the coming months. In addition to our service to the courts, the AO works closely with the Congress, in particular, the Appropriations Committee and its staff, to provide accurate and responsive information about the Federal Judiciary. I recognize that fiscal year 2008 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today.  
I would be pleased to answer your questions.

Senator DURBIN. Mr. Duff, thank you very much. And, Judge Gibbons, thank you for joining us.

I've got a host of topics here, and I'll have 5 minutes, so I'll start with them, and then Senator Allard will have an opportunity, and then I'll come back.

#### FEDERAL PROTECTIVE SERVICE SECURITY

The first thing I want to talk about is the Federal Protective Service. I really didn't know this was the situation until I prepared for this hearing. We kind of joke, around Washington, about the fact that, when it comes to food safety, we have an agency responsible for cheese pizza and another agency responsible for pepperoni pizza. And I'm not kidding. But this comes as a surprise to me, that the perimeter of your buildings is under the jurisdiction of the Federal Protective Service, an agency within the Department of Homeland Security. The Federal Protective Service money comes through the appropriation to the Department of Homeland Security, and, of course, the U.S. Marshals Service through your appropriation directly to them. And that is kind of curious, in and of itself. And then I read that the Federal Protective Service has had a series of problems and difficulties here. This doesn't appear to be a new problem; this appears to be a recurring problem. Would you like to comment on just how bad this is?

Judge GIBBONS. Well, obviously it's of sufficient concern to us that it was included in my written testimony. The language we used is straightforward. It's important enough that the Judicial Conference felt compelled to take a position on it and to seek a change in our situation with respect to responsibility for our exterior perimeter security. So, it is an important issue to us.

Obviously, we all have much more heightened awareness today than we did a number of years ago of the need for such security, and we are reluctant to let these things go once we find out about them and realize that we are not having difficulties that are of an isolated nature.

Senator DURBIN. I take this very seriously. We had a situation in Chicago, a few years back, involving a judge whom I appointed

to the bench, a tragedy that befell her family because of lack of security.

Judge GIBBONS. Of course, that touched all of us very much.

Senator DURBIN. And I've really tried to work with Senator Obama to not only address our situation in Illinois, but nationally, as well.

Here's what I'd like to propose. I'm going to ask that the Federal Protective Service, or if it's the Department of Homeland Security, whatever, that some representative of that agency meet with me, as well as with the U.S. Marshals Service, and Mr. Duff, if you're available——

Mr. DUFF. Yes, sir.

Senator DURBIN [continuing]. I'm going to invite Senator Byrd, who is chair of that Subcommittee on Homeland Security, and the ranking members of this committee and that, as well, to come to my office and have a conversation about the situation. I am inclined, at this point, to try to devise a way to transfer the money out of the Federal Protective Service into the Marshals Service and be done with it, but I want to hear their side of the story and see if there is something which can be done or something in transition which makes sense.

#### SECURITY OF JUDGES

If I could ask one other question on security, one of the things we've tried to do is make the homes of the members of the judiciary safer as a result of our continued concerns. Can either of you comment on whether or not that effort has shown any results?

Judge GIBBONS. Over 1,400 security systems have been installed in judges' homes and there are 200 security systems left to be installed. Money is available to continue to monitor those systems and to install systems for new judges who are appointed. The remainder of the judges, either for one reason or another, did not want systems, or many of them, doubtless, had previously purchased their own.

Senator DURBIN. There was also a concern about financial disclosure statements.

Mr. DUFF. Yes.

Senator DURBIN. About information that judges were required to disclose which may compromise their safety.

Mr. DUFF. Yes, sir.

Senator DURBIN. And we have been in the midst of that battle. And I don't think it's been resolved in Congress, as it should have been, as of today. Could you comment on that?

Mr. DUFF. Yes, Mr. Chairman. And first let me thank you personally for your leadership on these security issues. It's very much appreciated, and we're grateful for the support you've given.

On the financial disclosure redaction authority, the authority to redact information on financial disclosure reports had a life cycle, if you will, and it expired. And so, we need an extension of that authority from Congress, which, frankly, we had hoped would have been done in the last Congress, but did not get completed. And so, we're working very hard with both the Senate and the House to——

Senator DURBIN. I promise you, we'll return to that. That's something that should have been done, there shouldn't have been a question.

Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

We had—I want to follow up on your security question a little bit. A USA Today article—and it's a recent article—reported about a U.S. Marshals Service official who allegedly misspent \$4.3 million meant for courthouse security and witness protection, to pay for fitness centers and firing ranges at Federal buildings. My question is, were these funds that had been appropriated to the judiciary through the court security appropriation and transferred to the Marshals Service?

Judge GIBBONS. Our information is that they were not funds appropriated to the judiciary.

Senator ALLARD. I see.

Judge GIBBONS. The funding in question was appropriated directly to the Department of Justice.

#### FEDERAL PROTECTIVE SERVICE SECURITY

Senator ALLARD Okay. And, on the FPS issue, the chairman suggested moving those duties over to the Marshals Service. I hope that you would also look at the possibility of privatizing this. Private security firms already guard a vast majority of Federal buildings and—to improve efficiency without sacrificing security—and I'd like to hear some of your thoughts on privatizing security of the Federal courthouses.

Judge GIBBONS. Well, statutorily, the Marshals Service, has responsibility for the security at Federal courthouses. They do contract, to a limited extent, for the services of court security officers. And I don't know what firm is currently being used, but there is a private firm being used.

The court security officers perform functions where it's deemed appropriate for a lesser degree of security. Many of them are retired law enforcement. They man the equipment at the doors of the Federal buildings. They patrol the interior hallways. They provide in-courtroom security when the case is considered low security enough not to require the services of a marshal. The marshals do continue to handle all of the transporting of prisoners and defendants being held in custody. The Marshals Service also contracts for the housing of the prisoners, in some cases, in private facilities.

Senator ALLARD. But, no matter what—I mean, if we were to change the agency or decide to do more privatization, there's going to be—have to require a change in the law, is that it?

Judge GIBBONS. Well, I think—you know, I—

Senator ALLARD. Potentially. We just have to look at that. You can put it that way.

Judge GIBBONS. We'd have to look at it. I think so, but I did not look at the statute in preparation for this hearing.

Senator ALLARD. Okay. Well, we might have a little different perspective on that. But at least I think we need to look at all options on that.

[The information follows:]



The Administrative Office of the U.S. Courts believes that a statutory change would be the best course of action in order for the U.S. Marshals Service to assume security functions at court facilities that are currently being performed by the Federal Protective Service.

#### WORKING WITH THE GENERAL SERVICES ADMINISTRATION

Senator ALLARD. Also, in your testimony, I was pleased to hear that you're working together with the GSA. And there's some questions. Has this affected judges to the point where there's—you had to cut staff and resources with this issue because they were taking so much for rent?

Judge GIBBONS. From time to time we have had real concerns about maintaining staff to pay the rent. And at times we have had to cut staff because we did have to pay the rent and other must pay expenses. That particularly happened to us in fiscal year 2004, largely as a result of an across-the-board cut. Since that time, we have worked really hard on containing our rent costs, and we have a lot going on in that area. We are very hopeful that we will not have to compromise staffing again to pay the rent.

Senator ALLARD. And a follow-up, there's—I assume it's had some impact on whether you construct new Federal courthouses.

Judge GIBBONS. Well, yes. The Judicial Conference adopted a cap on rent of an average of 4.9 percent increase per year, and the effect that that has on the building of Federal courthouses is that we now must take into account the fact that we're going to have to pay rent for these facilities in the future. So, that is a much greater part of our planning process than it was previously.

Senator ALLARD. So, how's your dollars going to go further? I mean, some agencies saying that it's better to rent, contract out, some say it's better to just go build your own facility. So, from what point of view are you looking at this, or are you looking at sort of a mixed view?

Judge GIBBONS. I think a mixed view. Jim may want to address that further.

Mr. DUFF. It is a mixed view. But I would emphasize—re-emphasize that the judiciary is taking very seriously cost containment and projections of rent, going forward. And imposing these rent caps on ourselves internally, on our own, is, we hope, a demonstration of our good-faith efforts to hold down, as best we can, our rent costs. And that does have an impact on courthouse construction. It keeps us on a reasonable pace for rent increases.

I, frankly, had a hard time understanding the whole concept of rent when I became Director of the AO. It just seemed very odd to me that we would be paying rent for our own buildings. But I think that is—it's a reality that we work with GSA on. And we have a long way to go with GSA, but, as I said earlier, I'm very pleased with the tone of the dialogue, and we're going to work hard together to try to come up with solutions to these problems, rather than throwing the problems in your lap.

Senator ALLARD. That's good news.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator.

## PANEL ATTORNEY RATE INCREASE

Let me address this issue about the pay increases for panel attorneys. The recommendation, as I understand it, for noncapital cases, is to increase the rate to \$113 per hour for the next fiscal year. And I've read a little bit here in your testimony, and a little bit of history here, that indicates that part of this has to do with the fact that—we're familiar with this, as Members of Congress—part of it has to do with the fact that there were years where there were no increases; and so, there was no effort for—or there was, in effect, no cost-of-living adjustment for the rate that was paid. And now, the suggested increase would move, I think, from \$94 to \$113, which, by my quick calculations in my head, is somewhere a little over 20 percent increase.

First, let me ask you about these attorneys, these panel attorneys in noncapital cases. What kind of requirements are there for these attorneys to serve on those panels?

Judge GIBBONS. Well, districts set their own requirements, but generally the requirements are geared to making sure that attorneys who are members of the panel are competent to represent defendants in the sort of cases we have in Federal court. So, for example, a court might decide not to put a brand-new attorney on the panel until the attorney has gained some experience, perhaps being mentored by another attorney, or if an attorney fails to perform well, is not conscientious about representing the client, then the court might not want to appoint that attorney anymore. So, there's no standardized set of qualifications, but courts do take steps to make sure these are people who have the skills and experience to effectively represent defendants in Federal court.

Senator DURBIN. And one of the things that you refer to in your testimony is a statistical survey of attorneys. And can you tell me what your conclusions were from that survey?

Judge GIBBONS. Well, the surveys showed us that over 50 percent of judges thought that their courts were having difficulties in recruiting attorneys at the then-hourly rate of \$90. Thirty-eight percent of the attorneys surveyed said they had declined a case because of the low rate of compensation; 70 percent of the attorneys said an increase would be required for them to accept more cases; and then, most importantly, we learned that, after overhead deductions, the attorneys are actually making about \$26 an hour. These same attorneys, if billing to a private-paying client, would be charging an average of \$212 an hour. This was in early 2005, when the surveys were done. And so, then, after deduction of overhead, the effective rate for the attorney would be \$148 an hour. Those are the primary results of the survey. I've been told by the helpful staff behind me that panel attorneys, on average, have at least 5 years experience.

Senator DURBIN. Now, let me ask you about the universe of those who were surveyed. Are they those who had previously served on panels?

Judge GIBBONS. Yes, they were serving on the panel at the time the survey was done.

Senator DURBIN. And do you know how this \$113-an-hour rate was arrived at?

Judge GIBBONS. Well, yes.

It's one of those judgment calls. We believe—

Senator DURBIN. Since you're a judge, that makes sense.

Judge GIBBONS. That seems appropriate. There's a methodology under which we believe calculating inflationary increases that actually we would be entitled to—we could make a case, we thought, for asking up to, I believe it's \$133 an hour for fiscal year 2008. However, we felt that, given current budgetary constraints, and given the fact that we were asking for a fairly large jump at one time, we felt that \$113 was an appropriate rate to request.

Senator DURBIN. Is the current rate inadequate to attract qualified panel attorneys?

Judge GIBBONS. In some cases, yes.

Senator DURBIN. Thank you.

Senator Allard.

#### FISCAL YEAR 2008 REQUEST

Senator ALLARD. Thank you, Mr. Chairman.

In the fiscal year 2007 appropriations, they were not enacted until February 15, but you'd been working on your 2008 budget long before that. So, I'm curious, in developing that 2008 request, what funding levels did the judiciary assume for 2007?

Judge GIBBONS. In formulating the 2008 request, we assumed that we would receive the midpoint of the House-passed and Senate-reported bills, less 1 percent for an across-the-board rescission. What we actually got was \$44 million less than that.

Senator ALLARD. I see. Okay. And what impact did the 2007 enacted level have on the judiciary's 2008 request?

Judge GIBBONS. Well, we made adjustments to our fiscal year 2008 request based on 2007 enacted levels. In the normal course of things, we would be providing a formal budget re-estimate to you in May. We have gone ahead and revised the 2008 request downward by \$80 million. And what's changed since its original submission is \$37 million in reduced rental costs as a result of the rent validation efforts. Some judgeship vacancies were not filled that we had assumed would be filled. That reduced our 2008 request by \$23 million. The \$20 million we got in 2007 for additional staff for our immigration and law enforcement workload, actually enabled us to take out of the 2008 request the \$21 million we requested for new staff. And the reason for that is the \$20 million translates to about 200 employees, and, because of the nature of the employees we're hiring, we can't bring that many employees onboard that quickly. So, we asked for no new staffing for 2008, and plan to revisit our staffing needs, as far as any upward adjustment, in 2009.

#### GENERAL SERVICES ADMINISTRATION CONSTRUCTION PROJECTS FOR THE JUDICIARY

Senator ALLARD. Well, thank you, I appreciate your answer on that.

GSA recently sent us a list of projects, including courthouses that it proposes to fund in 2007. Does this list represent the judiciary's priorities?

Judge GIBBONS. Yes, it reflects our 5-year construction plan.

Senator ALLARD. And I'm curious, could you explain the process for scoring and ranking a project and determining the cost?

Judge GIBBONS. Well, the court—the projects that are listed on the 5-year plan are scored in priority order on the basis of criteria that are weighted, in terms of importance. Security concerns count for 30 percent; length of time a building has been filled to capacity, 30 percent; operational problems of existing facilities, 25 percent; number of current and projected judges needing a courtroom, 15 percent. As far as costs are concerned, we use estimates. When we have an estimate from GSA, we use that. Until we have an estimate from GSA, we use our own estimates. And I think that, in very broad terms, describes the process.

Senator ALLARD. Now, sometimes these changes that occur, I understand from—there are some changes that occur from year to year. Why does that happen?

Judge GIBBONS. Well, delays cost money.

Senator ALLARD. I see.

Judge GIBBONS. Sometimes things don't turn out quite as intended. I looked this morning at the 5-year plan, and learned, for example, there was one project where initially GSA intended to use federally owned property. Later, that property didn't become available, and so another site acquisition was required. All kinds of things that can come up in the course of a construction project.

Senator ALLARD. I see.

Mr. Chairman, my time's expired. I have—I'd like to follow up on this, and that would complete my questioning, if I might.

Senator DURBIN. Go ahead.

#### COLORADO DISTRICT COURT

Senator ALLARD. In Colorado, we're hearing about the need for two district courts. I mean, we've got—one district court covers the whole State. We look at Arkansas. They have two districts in that State, and they don't have a mountain range that runs up and down and divides the State into two distinct geographic areas with problems in transportation, particularly when we've had a winter like we've had this winter. And we also have two population centers. The population center in El Paso County, which is Colorado Springs, is as big as the Denver—the city and county of Denver now; and we have huge growth issues, as far as the State is concerned, 30 percent. And they're not listed on the priority. And I know that when you create a new district, you create a new courthouse. And I wondered if you might comment on our situation in Colorado. We've got some opposition, I think, from the judges that are sitting on the court in Denver, because they like it there, it's a nice, big metropolitan area. In Colorado Springs, we—from law enforcement, we hear a lot of concerns because of having to move prisoners, when there's traffic concerns and problems and security issues, and then, over the mountain, obviously, the truck goes on the pass, gets turned sideways on the road in some way, that creates a problem.

Judge GIBBONS. You know, unless Jim feels that he has enough information to speak to Colorado directly, if we may, I would prefer that we get back to you about that.

Senator ALLARD. I would appreciate that.

Judge GIBBONS. I, obviously, in order to advocate the judiciary's budget, have to know something about construction and how those are processed, but the primary committee within the judiciary that deals with those issues is our Space and Facilities Committee. A representative from that committee, either in talking with you directly or in providing a supplemental answer to the question, would be able to tell you in much more detail how this would be approached, whether anything is actually going on with respect to the Colorado situation, at this time——

Senator ALLARD. I'd appreciate that. Thank you very much.

And thank you, Mr. Chairman, for your indulgence.

Senator DURBIN. Thank you, Senator.

[The information follows:]

The Judicial Conference does not take a position on the creation of a new judicial district unless legislation has been introduced in Congress. The Judiciary is not aware of any legislation that has been introduced in the current or previous Congresses to create a second judicial district in Colorado. When legislation is introduced that creates a new district or a new division within an existing district, the Judicial Conference sends the legislation to the chief judge(s) of the affected district(s) and circuit(s) to evaluate the merits of the legislative proposal based on caseload, judicial administration, geographical, and community-convenience factors. During this evaluation, the views of the affected U.S. Attorney(s) are also considered. Only when the legislative proposal has been approved by both the affected district court(s) and the appropriate circuit judicial council(s) does the Judicial Conference's Committee on Court Administration and Case Management review the proposal and recommend action to the Judicial Conference.

Since legislation has not been introduced, the Judicial Conference has not taken a position on splitting the District of Colorado, although the district court in Colorado does not believe that splitting the district would be cost effective. Doing so would require a new courthouse, clerk of court, bankruptcy court, and probation and pretrial services office. A new district would also significantly impact the U.S. Marshals Service. The federal court caseload in Colorado Springs does not support either a second district for Colorado or the creation of a separate division within the current district. From fiscal year 2004 to fiscal year 2006 criminal felony filings for Colorado Springs/Pueblo declined 29 percent from 95 to 67 filings. Criminal misdemeanor filings handled by a magistrate judge declined by 46 percent, from 307 filings in fiscal year 2004 to 167 filings in fiscal year 2006. Also, the district's probation office is currently reducing its officers in Colorado Springs due to declining caseload.

Colorado Springs, county seat for El Paso County is approximately 65 miles from Denver on Interstate 25, a significant part of which is now three lanes each way. El Paso County is served weekly by a magistrate judge to handle petty offense and misdemeanor matters generated at the numerous military installations in the area (Public Law 108-482, enacted on Dec. 23, 2004, amended Section 85 of title 28, to include Colorado Springs as a place of holding court). The district recognizes and is addressing the need for enhanced magistrate judges presence in Colorado Springs to address civil matters there.

The district court in Colorado is not supportive of a separate district or division based upon the above cost-versus-need considerations. The district's long-range plan approved by the circuit council is now complete with the construction of the Alfred A. Arraj U.S. Courthouse and the Byron Rogers Federal Building and U.S. Courthouse in Denver.

#### THE COURTS' CASELOAD

Senator ALLARD. I'd like to address this caseload issue, if I might. And the statistics which you have referred to when it comes to staffing indicates a pretty substantial increase in aggregate caseload—195 percent, in fact—between 1984 fiscal year and fiscal year 2006. And yet, in all of the categories of anticipated filings in this fiscal year, with perhaps one exception—appellate filings, civil filings, criminal filings, and bankruptcy filings—you are anticipating

a decline in caseload, the exception being the Southwest area, where caseloads have gone up dramatically on immigration questions. I can see the case you're making for an increased caseload up to 2006, while staffing resources have barely increased. Tell me, as you look forward to 2007, if the argument can't be made that things are starting to level off, in terms of caseload.

Judge GIBBONS. Well, maybe. The reason we included, in the written testimony, the historical chart that goes back to 1984 was to give an illustration of how, although caseload fluctuates, maybe goes up and down in the short term, over time it has trended upward. And that's really just to give you a context within which to consider the current rather modest declines.

Another thing to keep in mind is, these are projections, and so we're always a little bit careful about how we use them. I asked, yesterday, "How do we project what our filings are?" Well, the answer is, "We take our actual filings for 1 year, and we run them through various statistical forecasting models and get, you know, a 3-year projection." I said, "How accurate are they?" And they said, "Well, first year, pretty good; second year, a little less so; third year, a little less so."

So, we don't really know what to make of these modest declines in appellate and district court caseload. We also don't quite know yet exactly what to make of the situation in bankruptcy. It's obvious there's a real drastic decline in cases, but that may not translate into a drastic decline in workload, given the requirements of the new law. And then, of course, we have upward trends in workload, still, in probation and pretrial. So, maybe it's the beginning of some overall trend, but maybe not. I think we'd be hesitant to attach too much future importance to it.

#### PROBATION AND PRETRIAL SERVICES

Senator DURBIN. And I want to go to the one point you just made. I think the case you make on probation and pretrial services is very compelling, the nature of the work that's being done there, and the importance. It appears that the rate of incarceration has dramatically increased for those who are being served by that part of our system. And, of course, their success can reduce recidivism, which is an added cost to society, first; and taxpayers, second. So, when it comes to the allocation of staff, let's say, for the probation services, where's that decision made?

Judge GIBBONS. Well, we have various work measurement formulas which are our ways of measuring the work. And those are the—those, plus some adjustments for—for example, we done a 2-percent productivity assumption—but those are—figure in to what our budget request is. Then, after we receive our request, we have the ability to make some ad hoc adjustments, depending on, you know, if we've had, say, since the time of the submission of the request, or since the time of our last re-estimate, we've had substantial increases in an area, we'll take that into account and make adjustments in the financial plan, which comes back to you for approval and review, and then in the allotments to the courts.

[The information follows:]

The Judiciary has work measurement formulas that it uses to measure the courts' work in order to determine staffing needs. The allocation of staff and the associated

funding is based on each court units' workload as well as resources available for the courts on a national level. Once Congress provides an appropriation, the Judiciary makes a determination on how best to utilize the funding to cover rent costs, information technology investments, judge and chamber needs, and staffing needs in clerks and probation offices nationwide. The bulk of the Judiciary's costs are for must-pay items over which it has little control. The remaining funds are used for court staffing and operating costs. Workload in a specific court or probation office is the primary cost driver of how staffing allocations are made to each court unit, although funding constraints necessitate that funding for staff be reduced well below the staffing levels indicated as necessary by the staffing formulas.

#### ADAM WALSH CHILD PROTECTION AND SAFETY ACT

Senator DURBIN. And you make a point here in your testimony about recent legislation, the Adam Walsh Child Protection and Safety Act of 2006, which will increase, significantly, the number of sex offenders coming into the Federal probation and pretrial system for supervision; and monitoring their behavior, you say, is very challenging, requires intense supervision. I will say, and I'm sure it comes as no surprise, that I'm not sure that any Member of Congress even paused to think about that part of the law. We were—obviously felt that we were answering a need to keep our streets safer and our children safer, but never stopping to think what that meant in terms of additional people working in this area. And for those who believe that you can just consistently cut back in the number of people who are working in the Federal Government, they have to understand that sometimes we pay a price that we don't want to pay. Having people who are effective in this area could protect a lot of children and a lot of families.

Judge GIBBONS. I looked at that statute yesterday, and was really quite surprised at the very specific kinds of ways in which it's going to affect probation and pretrial: Longer periods of supervised release, notification requirements, searches of homes of offenders, required electronic monitoring, in some cases, for pretrial releasees, more stringent Bail Reform Act requirements resulting in more detainees—I mean, it's broad and has an impact in many different ways.

Senator DURBIN. And each and every aspect of it is defensible and laudable, and yet, from a practical standpoint, it puts a greater burden on the courts, and one that is more costly to the taxpayers. It is something which we should be more honest about when we talk about these things here in Washington.

#### REPORTING ON IMPACTS AND RESULTS

The judiciary routinely reports statistical information, but doesn't necessarily take it to the next level by providing the impact or results of the data. For example, Congress mandated, in 1988, that district courts make alternative dispute resolution available to litigants, but there hasn't been a report of accomplishment about which methods of alternative dispute resolution are more likely to settle cases and avoid a trial. Would you consider reporting on the impact of the way the judiciary does its work, beyond simple statistical reporting?

Judge GIBBONS. I gather you're asking for a report, beyond an answer to your question today.

Senator DURBIN. Yes.

Judge GIBBONS. We will report on whatever Congress asks us to report on, Mr. Chairman.

Senator DURBIN. Thank you.

Well, this is one of those congressional mandates which we think is a very compelling thing and is usually ignored by many agencies. So, I hope that you'll take a second look at it and see if you might report to Congress on which methods are most successful.

Judge GIBBONS. I will just make one very general comment. I was a district judge for 19 years before becoming an appellate judge, and had a number of experiences with a number of different kinds of alternative dispute resolution in the district court. And there are a number of them that are very effective. And most courts are quite enthusiastic about implementing them.

[The information follows:]

Staff at the Administrative Office of the U.S. Courts will have further discussions with Subcommittee staff regarding a report on which methods of alternative dispute resolution are most effective.

Senator DURBIN. Thank you very much.

I want to apologize to you and to Mr. Duff, and to all present, for coming in late. That's something that I think is disrespectful, and feel very badly about that. But I thank you for your patience, and especially for your testimony.

#### ADDITIONAL COMMITTEE QUESTIONS

And we will leave the record open for those who might submit additional questions for you to consider.

I appreciate the benefit of hearing from you about your funding needs for the judiciary. I think we have further insights into your operations, and they'll help us in our deliberations.

As I have mentioned, the hearing record will remain open for a period of 1 week, until Wednesday, March 28, at noon, for subcommittee members to submit statements and/or questions for the record.

[The following questions were not asked at the hearing, but were submitted to the judiciary for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

*Question.* The Judiciary received an additional \$20 million in the fiscal year 2007 continuing resolution to address critically understaffed workload associated with immigration and other law enforcement needs. The funding was provided because the caseload at the Southwest Border courts has reached critical levels, in part, due to forced staffing reductions a few years ago. How do you plan to use these resources?

*Answer.* The \$20 million will enable courts that are critically understaffed to hire about 200 staff to address increased workload needs resulting from immigration and law enforcement initiatives as well as other workload drivers.

The Judiciary's fiscal year 2007 financial plan allots a net additional \$5.7 million in salary funding based on the workload needs of the courts as determined by the staffing formulas. Of this amount, \$3.3 million (58 percent) was allotted to the five Southwest Border courts to address workload needs. This \$3.3 million equates to approximately 65 FTE. The remaining \$2.4 million (42 percent) was provided to the remaining appellate and district courts and probation and pretrial services offices to address workload needs.

Since the Judiciary was operating under a continuing resolution until February 15, 2007, courts were instructed to operate at fiscal year 2006 funding levels and to restrict discretionary spending. This meant that only courts that had attrition during the continuing resolution were allowed to hire. Some courts conducted preliminary recruitment activities during this time and are ready to fill vacancies



quickly, while other units have delayed the entire hiring process until final 2007 funding levels were known.

Given the lead time it takes to recruit and hire, all \$20 million cannot be obligated during fiscal year 2007. We have therefore set aside in reserve the remaining \$14.3 million (the \$20 million less \$5.7 million for new staff in the 2007 plan) so that funding will be available in fiscal year 2008 for courts to continue to fill these positions.

*Question.* The Judiciary's revised fiscal year 2008 budget request this year calls for a 7.6 percent increase, an amount likely to be more than the Subcommittee will be able to provide. What are you doing to make yourself more efficient in order to accommodate lower resource levels?

*Answer.* While the Judiciary requires a 7.6 percent overall increase to fund fully its request, it requires a 6.5 percent increase just to maintain a current services level of operations.

#### *Actions That Reduced Fiscal Year 2008 Appropriations Requirements*

The Judiciary has taken several actions to become more efficient and to limit fiscal year 2008 appropriations requirements in the Salaries and Expenses account. These actions reduced the fiscal year 2008 appropriation requirements for the Salaries and Expenses account by \$80 million. These actions include:

- Applying a productivity factor to the staffing formulas to reflect the enhanced productivity achieved through the use of improved business processes and the use of technology (–\$15 million, –199 FTE).
- Implementing cost containment initiatives in probation and pretrial services offices (–\$28 million, –322 FTE).
- Reviewing and validating GSA rent bills to ensure that GSA is applying its space pricing policies accurately (\$37 million).

#### *Space Initiatives*

The Judicial Conference continues to build on its cost-containment strategy that was adopted in September 2004. The Judiciary is establishing budget caps in selected program areas in the form of maximum percentage increases for annual program growth. For our space and facilities program, the Judicial Conference approved in September 2006 a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years 2009 through 2016. By comparison, the increase in GSA rent in our fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs, and courts will have to further prioritize space needs and deny some requests for additional space.

An interim budget check process on all pending space requests was implemented in order to slow space growth. The budget check ensures that circuit judicial councils, together with the Administrative Office, consider alternative space, future rent implications, and the affordability of any request by the Judiciary. This approach is helping to control the growth in costs associated with space rent for new court-houses and major renovations.

The Judiciary completed a comprehensive review of the U.S. Courts Design Guide. In March 2006, the Judicial Conference endorsed revisions to the U.S. Courts Design Guide that lower the future rental costs of chambers space by reducing the size of the judge's office in non-residential chambers and chambers' conference rooms, and reducing the number of book shelving ranges and chambers' closets. The standards of the revised Design Guide will apply to the design and construction of new buildings and annexes, all new leased space, and repair and alteration projects where new space, including courtrooms and chambers, is being configured for an entire court unit.

The Judiciary's rent validation project has achieved significant savings. This initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery was savings and cost avoidance over three fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to research and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through the rent validation effort the Judiciary recently identified additional overcharges totaling \$22.5 million in savings and cost avoidance over three years. GSA has been very responsive to correcting billing errors that we bring to their attention. By identifying and correcting space rent overcharges we are able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.

### Information Technology Initiatives

The Judiciary is at the forefront of the federal government's efforts to leverage the use of information technology to automate business processes and maximize efficiency. For example, the Judiciary's Case Management/Electronic Case Filing (CM/ECF) project automates the paper intensive case filing process. The Judiciary's CM/ECF system is operational in all bankruptcy courts, 92 district courts, one appellate court, the Court of International Trade and the Court of Federal Claims. Implementation is underway in all remaining courts. The Judiciary anticipates long-term efficiencies will be achieved as a result of the CM/ECF implementation. This benefits not only the Judiciary, but also the bar and public who will have greater access to court information.

At least 80 percent of all bankruptcy cases are being filed electronically by attorneys in about 80 percent of the bankruptcy courts, and in many bankruptcy courts nearly all of the cases are being filed electronically. In addition, the courts have been enhancing efficiency through a combination of local management initiatives and court-developed automation innovations. For years, the bankruptcy clerks have been adopting new management techniques, developing and sharing best practices, and using the flexibility provided under the Judiciary's budget decentralization program to invest in automation solutions that save resources as well as improve quality and performance.

In our probation and pretrial services program, the Probation Automated Case Tracking System (PACTS) electronic case management system makes probation and pretrial services officers more efficient by enabling them to access from their workstations a wide range of case-related information. In fiscal year 2007, the Judiciary will complete consolidation of PACTS servers from all 94 districts into two contractor-owned and operated facilities. The consolidation will help the Judiciary avoid \$3 million in costs over the next five years, with no degradation in service. Further, consolidating servers provides two levels of fail-over capabilities, a feature that did not exist in the old decentralized system of district-based servers, thereby providing extraordinary value in terms of continuity of operations planning. Probation and pretrial services offices continue to automate segments of their business processes to improve service to the court, other law enforcement and criminal justice agencies, and the community. Enhancements to the PACTS will continue in fiscal year 2008 to help offices manage cases more efficiently.

*Question.* The fiscal year 2008 request for Defenders represents an \$84 million or 11 percent increase over last year and the fiscal year 2007 appropriation level helped address the needs of Defenders. Why is this level of increase still needed?

*Answer.* In fiscal year 2008, the requested \$83.6 million increase in appropriations consists of the following categories:

	Amount of Total Increase	Percent Increase	Percent of Total Increase
Pay/benefit adjustments and standard inflationary increases .....	\$29,685,000	3.8	35.5
Additional 8,200 representations .....	21,960,000	2.8	26.3
Replace fiscal year 2006 carryforward .....	9,509,000	1.2	11.4
Subtotal, Adjustments to Base .....	61,154,000	7.9	73.2
Increase in panel attorney rates from \$96 to \$113 per hour .....	21,797,000	2.8	26.1
Establishment of two new FDOs .....	600,000	0.1	0.7
Subtotal, Program Increases .....	22,397,000	2.9	26.8
Total Increase .....	83,551,000	10.8	100.0

Although the Defender Services' fiscal year 2008 request of \$859.8 million represents an \$83.6 million (10.8 percent) increase in appropriations, a \$61.2 million (7.9 percent) increase is required in this account just to maintain current services which includes funding for standard pay and non-pay inflationary increases and funding for 8,200 additional Criminal Justice Act representations projected for fiscal year 2008. The remaining \$22.4 million (2.9 percent) is requested for program increases to (1) increase the non-capital panel attorney rate from \$96 to \$113 per hour (\$21.8 million)—substantially less than the \$133 hourly rate panel attorneys would receive had COLAs been funded every year since 1986; and (2) establish two new federal defender organizations (\$0.6 million).

*Question.* The Judiciary has commented in recent years on the inadequacy of court staffing levels, given the courts' workload growth over the last several years.

In applying budget balancing reductions each year, what priority does the Judiciary give to funding court staff salaries versus other program priorities (information technology, space rent, operating costs, etc.)?

Answer. The Salaries and Expenses (S&E) financial plan is divided into four main categories: (1) mandatory, (2) historically fully funded, (3) short-term uncontrollable, and (4) controllable. The first three spending categories are funded fully in the development of the financial plan. For formulation and long-range planning purposes, all funding categories are subject to scrutiny and cost-containment initiatives.

The first three categories include funding for judges and chambers staff salaries and benefits, court staff benefits, funding for law enforcement activities and contracts including drug testing and treatment, mental health treatment and electronic monitoring, law books, GSA space rental, background investigations, law enforcement training, and long distance telephone charges.

All budget balancing reductions are applied to the fourth spending category, the controllable portion of the budget which includes items such as court staff salaries, court operating expenses, information technology, and national training programs. Budget balancing-reductions reflect the views, input, and in some instances, specific recommendations from various Judicial Conference committees and court advisory groups. Once funds are allotted to the courts, funding priorities are determined at the local level in accordance with the Judiciary's budget decentralization policies.

Court salaries comprise about 32 percent of the Salaries and Expenses total budget and over 80 percent of the controllable spending category. The formulas used to calculate staffing and salary needs are scientifically-derived and incorporate the functions and work requirements of the different court programs. Of the controllable items, court staff salaries receive the highest priority.

To balance requirements with available resources, the Judiciary has traditionally applied a lower percentage reduction to court salary allotments. In years in which the Judiciary has received severe funding reductions, the percent reduction applied to the non-salary accounts has been up to three times the reduction applied to court salaries. The fiscal year 2007 financial plan reflects a 5.9 percent reduction to court salary allotments, and a 12 percent reduction to court operating expenses from full requirements.

*Question.* In studying how you formulate your budget, the National Academy of Public Administration (NAPA) recently recommended that you work with Executive Branch agencies such as Justice and Homeland Security more closely to determine the impact of their operations on the Judiciary. This would appear to be a good idea and might have helped you last year when the Administration did not include needs for the Judiciary in its Southwest Border Initiative package for consideration in the fiscal year 2006 Supplemental Appropriations bill last year. What is your opinion on this recommendation?

Answer. The Judiciary has received a draft copy of the study and is in the process of preparing agency comments. Comments will be provided to NAPA for its consideration in finalizing the report.

Page 37 of the draft NAPA report states the following:

"A strategic, comprehensive approach to budgeting is further hampered by the constitutional separation of powers between the judicial and executive branches. The absence of communication or integrated deliberations about budgets for all parts of the justice system make it more likely that budgets for the executive and judicial branches will not address reciprocal workload implications. Such disconnects can reduce the overall effectiveness of the justice system and can, in extreme cases, produce bottlenecks or disruptions that threaten the fair and full administration of justice. The Panel realizes that this is something over which the Judiciary has no control. It is not a practice within OMB or among congressional appropriations committees to ensure that actions in one part of the federal budget do not have an impact on another. Assembling and considering a federal budget is complex and can consume those involved with broad issues and program details; it is enough to deal with their portion of it. However, as the entity at the final end of the 'decision continuum,' the Judiciary may have the most incentive to urge the branches to consider better ways to assess the impact of the proposed policies and spending decisions."

As the excerpt above notes, the Judiciary is at the tail end of the "decision continuum." Although the draft report indicates the Judiciary may have the most to gain in urging the three branches to work cooperatively to assess the impact of policies and spending decisions on the other, the Judiciary is powerless to effect change unilaterally. The Judiciary welcomes opportunities to work more closely with Executive Branch agencies on policies and initiatives that impact the federal courts.

*Question.* Strategic planning has become a valuable tool to Executive Branch agencies as they plan for the future. Why doesn't the Judiciary use strategic planning?

*Answer.* The Judicial Branch has engaged in strategic planning for many years. The Judiciary's role in our constitutional system and its unique governance structure necessitate different planning approaches than used in the Executive Branch, but its planning efforts are nonetheless serious and meaningful. Indeed, the Judiciary has successfully incorporated strategic planning into the fabric of its policy-making processes.

The Judiciary developed two strategic planning documents in the 1990's that remain valid. They are supplemented, as described below, with ongoing long-range planning activities that identify and address emerging strategic issues. The plans followed an extensive process that involved reaching out within the Judiciary and to other branches of government, the bar, and the public. Chief Justice William H. Rehnquist appointed a Long-Range Planning Committee of the Judicial Conference to coordinate this activity. The resulting Long-Range Plan for the Federal Courts identified the Judiciary's mission, core values and strategic concerns. It articulated a vision to guide the federal courts in fulfilling the role the Constitution and Congress assign to them, and it was intended to be relevant for the foreseeable future and serve as the underlying framework for planning, policy-making, and administrative decisions. That plan was closely followed with The Administration of Justice: A Strategic Business Plan for the Federal Courts, which articulated broad goals and objectives.

The Judiciary's national policy-making body is the Judicial Conference of the United States. The Judicial Conference's strategic planning process is coordinated by its Executive Committee and involves committees of the Judicial Conference and the Administrative Office of the U.S. Courts. Through its planning process the Judiciary identifies strategic issues and ensures long-term implications are considered in assessing Judiciary operations and programs; analyzing trends and developments; identifying ways to improve efficiency, effectiveness, and economy; and developing policies. The strategic planning process has enabled the Judicial Branch to anticipate, react and adapt to events and changes in a manner that conserves and enhances its core values.

The Judicial Conference's Executive Committee coordinates long-range planning efforts across committees, including the identification of crosscutting strategic issues. The Executive Committee meets with the chairs of committees twice each year to discuss Judiciary planning matters. One member of the Executive Committee serves as long-range planning coordinator. The process is supported by the Administrative Office's long-range planning office, in existence since 1991.

The long-range planning meetings of committee chairs provide an effective forum to discuss Judiciary-wide planning issues such as long-range projections of caseload and resources, funding constraints, workforce trends, changes in programs and operations, and the impact of technology. The various committees also engage in strategic planning within their areas of responsibility. They identify strategic issues, analyze trends, undertake studies, seek input, and consider alternative approaches before making policy recommendations to the Judicial Conference.

This active planning process enables the Judiciary to identify and address matters of strategic importance. For example, the consideration of workload and budget projections, in conjunction with anticipated funding constraints, highlighted the need for a long-term strategy to control the rates of growth in the Judiciary's future costs. An intensive effort was launched to assess the situation, and it resulted in the development of a cost-containment strategy for the Federal Judiciary.

The committees' planning efforts have been conducted in a manner best suited to their areas of responsibility. For example, administrative aspects of the Judiciary's business are more conducive to the development of specific plans of action, such as determining what technology projects will be pursued. The Committee on Information Technology produces a Long Range Plan for Information Technology in the Federal Judiciary, which is provided to Congress.

*Question.* The Judiciary does not regularly publish stated goals that you are then held to. Why not? How do you expect us to be informed of how accurately you use your resources without such information?

*Answer.* The goals of the Judiciary reflect the responsibilities that the Constitution and the Congress have assigned to the Third Branch. Based on the mission and core values set forth in the Long Range Plan for the Federal Courts, six fundamental goals are defined in The Administration of Justice: A Strategic Business Plan for the Federal Judiciary: to safeguard the rule of law; to guarantee equal justice; to preserve judicial independence; to sustain our system of federalism with na-

tional courts of limited jurisdiction; to maintain excellence; and to ensure accountability.

These goals do not change from year to year. The Judiciary's role is to handle the cases that come before the courts in a manner that is consistent with the fundamental values expressed in these goals. The Constitution vests the federal courts with the Judicial Power of the United States and the federal courts' business is defined by others. Congress determines the scope of federal jurisdiction, the structure of the Judiciary, places of holding court, and the number of judgeships. Litigants bring cases to the courts, and the Executive Branch is a primary litigant in the federal courts. Simply stated, the courts render decisions on matters that are brought to them; they do not determine what those matters will be, when they will come, how many will come, or who will bring them.

The Judiciary's resource needs are linked to the courts' caseload, the number of judicial districts and places of holding court, and related workload measures. Initiatives of importance undertaken by the Judiciary are reported to Congress in the Judiciary's budget as well as through annual reports and reports of the proceedings of the Judicial Conference.

Funding is provided to the courts through established national formulas based on workload factors, and the Judiciary reports extensively on its work. Many reports are produced, but of particular importance are reports on Judicial Business of the United States Courts and Federal Court Management Statistics, published annually by the Director of the Administrative Office of the U.S. Courts. These comprehensive reports contain details on national and court-specific statistics and comparative indicators. They cover cases filed, terminated, and pending; disposition actions; actions per judgeship; median time to (case) disposition; activities and actions on cases; probation and pretrial services work; defender services work, and many other facts. Semi-annual reports prepared pursuant to the Civil Justice Reform Act of 1990 provide data on motions pending for more than six months, bench trials submitted for more than six months, bankruptcy appeals and social security appeal cases pending more than six months, and civil cases pending more than three years. Juror utilization data are published each year. The United States Sentencing Commission collects records on each criminal sentence and reports on the courts' sentencing actions. Also, specialized reports on particular topics are frequently produced by the Judiciary, including reports requested by Congress.

In summary, accountability is a core value of the Judiciary. Its proceedings and records are open to the public, and an array of reports provides a broad and deep accounting of the work performed by the Judiciary with the resources provided.

*Question.* The new bankruptcy legislation took effect in October 2005, and it appears that filings have not yet rebounded. What filing patterns do you expect will emerge over the longer term?

*Answer.* Over 600,000 petitions were filed in October 2005, most of them just prior to the implementation date, October 17, 2005, of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Immediately following October 17, the number of new petitions plummeted—14,000 cases were filed in November 2005. Monthly filings have since been rising.

Historically, bankruptcy filings have exhibited strong seasonal patterns—with filings increasing during the early spring and declining during the late fall and early winter. Following October 17, 2005, the normal seasonal patterns were disrupted. Recent data, however, indicates that the seasonal patterns are reasserting themselves, evidenced by the 74,000 bankruptcy filings recorded for March 2007, a new post-BAPCPA high. This may suggest a return to historical filing patterns.

No consensus exists regarding the long-term effect of BAPCPA on overall filings. Some bankruptcy experts believe that the long-term effect will be minimal; others substantial. Most agree that the more work intensive chapter 13 filings will become more prominent.

*Question.* What has been the impact on the courts' workload as a result of the Booker/Fanfan Supreme Court decisions? Have all of the cases that came into the system been dispensed with?

*Answer.* The Supreme Court's decisions in *Blakely v. Washington*, 542 U.S. 296 (2004) (*Blakely*) and *United States v. Booker*, 543 U.S. 220 (2005) (*Booker*), affected filings in the appeals and district courts as the Judiciary reported in a June 2006 report requested by the House and Senate Appropriations Committees. This impact began when *Blakely* was decided in June 2004. Since then, in the courts of appeals, over 13,700 appeals resulting from *Blakely* and *Booker* were filed. During the same time, in the district courts, over 6,000 *Booker*-related habeas corpus petitions were filed by prisoners sentenced in the federal courts, about the number of such motions district courts receive each year. By the one-year anniversary of *Booker* in January 2006, all habeas corpus motions by prisoners who were eligible to file when *Booker*

was decided had been filed. By September 2006, the numbers for the filings of these motions had returned to their levels prior to *Booker*. To date, appeals and district courts have processed large numbers of such motions. However, their pending caseload remains high so all of the cases that came into the system have not been dispensed with.

Since January 2006, fewer criminal appeals have been filed than during the first year after *Booker*. However, the current numbers continue to be at levels 29 percent above what they had been before *Booker*. This leads the Judiciary to conclude that the criminal appeals caseload after *Booker* will remain at a level higher than it was before *Booker*, just as the criminal appeals caseload rose permanently to a new level after the U.S. Sentencing Guidelines were created.

In addition, *Booker*-related filings in the appeals and district courts are taking longer to resolve. This has increased the median disposition times for criminal appeals by two months, and for appellate prisoner petitions and district court criminal cases by one month. This explains why the *Booker*-related pending caseload remains high despite the increase in the number of such cases resolved.

*Question.* Please provide a brief summary of the Judiciary's cost-containment efforts.

*Answer.* In fiscal year 2004, the Judiciary received a significant reduction to its budget request, primarily due to across-the-board cuts applied during final conference on our appropriations bill. This funding shortfall resulted in staff reductions of 1,350 employees, equal to 6 percent of the courts' on-board workforce. Of that number, 328 employees were fired, 358 employees accepted buyouts or early retirements, and 664 employees left through normal attrition and were not replaced.

The 2004 situation made clear that the Judicial Conference had to take steps to contain costs in a way that would protect the judicial process and ensure that budget cuts would not harm the administration of justice. In March 2004, the late Chief Justice William H. Rehnquist charged the Judicial Conference's Executive Committee with leading a review of the policies, practices, operating procedures, and customs that have the greatest impact on the Judiciary's costs, and with developing an integrated strategy for controlling costs. After a rigorous six-month review by the Judicial Conference's various program committees, the Executive Committee prepared, and the Judicial Conference endorsed, a cost-containment strategy. The strategy focused on the primary cost drivers of the Judiciary's budget, which included an examination of the number of staff working in the courts, the amount they are paid, and the rent paid to the General Services Administration for courthouses and leased office space. Pursuing the implementation of cost containment initiatives is a top priority of the Judicial Conference.

*Question.* Does the fiscal year 2008 request reflect any reductions associated with cost-containment?

*Answer.* The Judiciary has taken several actions to become more efficient and to limit fiscal year 2008 appropriations requirements in the Salaries and Expenses account. These actions reduced the fiscal year 2008 appropriation requirements for the Salaries and Expenses account by \$80 million. These actions include: (1) applying a productivity factor to the staffing formulas to reflect the enhanced productivity achieved through the use of improved business processes and the use of technology (-\$15 million, -199 FTE), (2) implementing cost containment initiatives in probation and pretrial services offices (-\$28 million, -322 FTE), and (3) reviewing and validating GSA rent bills to ensure that GSA is applying its space pricing policies accurately (-\$37 million).

*Question.* What future savings/reductions does the Judiciary anticipate?

*Answer.* Pursuing the implementation of cost containment initiatives is a top priority of the Judicial Conference. The Judiciary has implemented cost containment initiatives that have already yielded significant savings. Future savings are expected to be achieved through continuing to control space costs; aggregating information technology servers in contrast to the current decentralized deployment scheme; shaping a more focused, cost efficient court support staff through process redesign; evaluating compensation policies with an emphasis on cost containment, and sharing administrative functions in the courts to create efficiencies and reduce operating costs.

*Question.* As a cost-containment measure the Judicial Conference authorized a two-year moratorium on courthouse construction projects and major renovation projects while the Judiciary re-examined its long-range space planning and design standards. Please summarize the results of your re-examination.

*Answer.* In March 2006, the Judicial Conference approved, in concept, a new long-range planning methodology for the Judiciary called "Asset Management Planning." The major features of asset management planning include: developing a more comprehensive assessment and documentation of the requested new courthouse and how

it would meet the operation needs of the court; identifying space alternatives and strategies, including minor and major renovation projects as opposed to constructing a new courthouse to meet current deficiencies and future growth needs; the development of a preliminary estimate of the costs to the Judiciary for the project, including additional rent; and developing a cost-benefit analysis to help identify the plan that best meets the short- and long-term needs of the Judiciary.

In addition, over the last two years the Judicial Conference has endorsed multiple amendments to the U.S. Courts Design Guide, that sets forth the space standards for new courthouse and renovation projects. These changes included decreases in the size of chambers suites for all types of judges, public space, atriums and staff offices, and technical amendments to save money.

*Question.* The Judiciary's rental payments to GSA have increased from \$133 million in fiscal year 1986 to more than \$1 billion in fiscal year 2008, equal to one-fifth of the courts' spending for salaries and expenses. What is the cause for this increase and what is the Judiciary doing to control these costs?

*Answer.* The increase in rental costs is caused partially by growth in the amount of space occupied by the Judiciary, but also by growth in the rental rates assessed by GSA. According to GSA, since 1985, the Judiciary has undergone growth of 166 percent in terms of the amount of space occupied, but the growth in court rental costs over the same time period has been 585 percent or 3.5 times the rate of increase in the amount of space. The biggest cost driver, then, has been the growth in rental rates—a consequence of GSA's "market" pricing approach.

The Judicial Conference has approved a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years 2009 through 2016. By comparison, the increase in GSA rent in the fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs, and courts will have to further prioritize space needs and deny some requests for additional space.

An interim budget check process on all pending space requests was implemented in order to slow space growth. The budget check ensures that circuit judicial councils, together with the Administrative Office, consider alternative space, future rent implications, and the affordability of any request by the Judiciary. This approach is helping to control the growth in costs associated with space rent for new courthouses and major renovations.

The Judiciary completed a comprehensive review of the U.S. Courts Design Guide. In March 2006, the Judicial Conference endorsed revisions to the U.S. Courts Design Guide that lower the future rental costs of chambers space by reducing the size of the judge's office in non-residential chambers and chambers' conference rooms, and reducing the number of book shelving ranges and chambers' closets. The standards of the revised Design Guide will apply to the design and construction of new buildings and annexes, all new leased space, and repair and alteration projects where new space, including courtrooms and chambers, is being configured for an entire court unit.

The Judiciary's rent validation project has achieved significant savings. This initiative originated in the New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery was savings and cost avoidance over three fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to research and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through the rent validation effort the Judiciary recently identified additional overcharges totaling \$22.5 million in savings and cost avoidance over three years. GSA has been very responsive to correcting billing errors that are brought to their attention. By identifying and correcting space rent overcharges the Judiciary is able to re-direct these savings to other Judiciary requirements, thereby reducing the request for appropriated funds.

*Question.* Enactment of bankruptcy legislation and the subsequent decline in filings have reduced fee revenues that the various parties in the bankruptcy system rely on to fund operations. Would you please comment on the impact this decline has had on the Judiciary, as well as the proposals of the case trustees and U.S. Trustees to generate additional fee revenue?

*Answer.*

#### *Impact on the Judiciary*

Filing fee revenue has historically comprised 5 percent of total financing for the Salaries and Expenses financial plan, with 75 percent of all fee collections coming from bankruptcy filing fees. In contrast, filing fee revenue in fiscal year 2007 comprises 3 percent of total financing, with 60 percent of all fee collections coming from

bankruptcy filing fees. The table below displays bankruptcy filing fees from fiscal year 2004 to fiscal year 2008. A significant drop-off in fee revenue is evident beginning in fiscal year 2006 (the bankruptcy reform legislation went into effect at the beginning of fiscal year 2006, on October 17, 2005). The impact of declining fee revenue is that the Judiciary is forced to request additional appropriations from Congress in order to fund current services requirements.

[In thousands of dollars]

	Fiscal Year—				
	2004 Actual	2005 Actual	2006 Actual	2007 Projected	2008 Projected
Bankruptcy Fees .....	220,759	236,537	168,287	85,532	91,522
Yr-Yr. Change .....		15,778	(68,250)	(82,755)	5,990

In addition to the reduced number of bankruptcy filings, the change in case mix between Chapter 7 filings and Chapter 13 filings may also be a cause of reduced fee revenue. Prior to the bankruptcy reform legislation, bankruptcy filings were comprised of 70 percent Chapter 7 filings and 30 percent Chapter 13 filings. The current mix is approximately 55 percent Chapter 7 and 45 percent Chapter 13s. The change in case mix will likely result in a reduction in fee collections over the short-term, since various motion-related fees under Chapter 13 may be collected over a period of up to 5 years, versus 90 days for Chapter 7 filings.

#### *Department of Justice Proposals to Increase U.S. Trustee Fees*

In its fiscal year 2008 Budget Request, the Department of Justice included two proposals relating to the United States Trustee program. The first would amend Section 589(a) of title 28, United States Code, to designate the deposit of fines collected from bankruptcy petition preparers pursuant to BAPCPA. This provision would have no impact on the Judiciary.

The second proposal, amending Section 1930(a) of Title 28, would increase the quarterly fees collected by the U.S. Trustee in Chapter 11 cases. These fees are paid by debtors directly to the United States Trustee program, based upon the debtor's quarterly disbursements. This proposal would affect the Judiciary in that parallel Chapter 11 quarterly fees are also collected in the six bankruptcy administrator districts in Alabama and North Carolina. The Judiciary would most likely increase quarterly fees in those districts, parallel to the increases proposed by the Department of Justice to the U.S. trustee quarterly Chapter 11 fee increases, to maintain national parity between the two programs. Such fees are deposited as offsetting receipts to the fund established under section 1931 of title 28, United States Code. Aside from a parallel increase in the Chapter 11 quarterly fee in the bankruptcy administrator districts, this proposal would not affect the Judiciary.

#### *Chapter 7 Case Trustee Compensation*

For several years, the National Association of Bankruptcy Trustees (NABT) has sought increased compensation for Chapter 7 case trustees. Chapter 7 case trustees are paid \$60 per case from a portion of the debtors' filing fee. The Chapter 7 case trustee's compensation is paid over to the trustee by the court if the debtor pays the full filing fee. The Judiciary merely acts as a pass-through for the fees paid by the debtor to the Chapter 7 trustee. The Judiciary has no responsibility to pay the Chapter 7 trustee's fees if the debtor does not pay a filing fee. Additionally, Chapter 7 trustees receive a percentage of distributions made in asset-Chapter 7 cases. Asset Chapter 7 case distributions made by the case trustee are reviewed and approved by the bankruptcy court.

Under the provisions of bankruptcy reform legislation, if a Chapter 7 debtor is granted in forma pauperis status, the debtor does not pay a filing fee. In this circumstance, none of the entities that usually receive a portion of the filing fee (Judiciary, case trustee, U.S. trustee fund and U.S. Treasury) receive any funds.

One NABT proposal is to increase the case trustees' statutory per case compensation from \$60 to \$100. The case trustees are also seeking a way to receive payments in in forma pauperis cases. The Judicial Conference and the Judiciary have no position on the amount of money Congress determines the case trustees should be paid by the debtors. The only concern of the Judiciary is that the proposals should not impact the amount of fee revenue the Judiciary receives.

Based upon the efforts of NABT, this proposal was included in the House version of the Financial Netting Improvements Act of 2006 ("Contracts Netting Act"). However, it was stripped from the bill in the Senate before the ultimate enactment of the legislation as Public Law 109-390. The case trustee fee increase included in the



House version of the Contracts Netting Act would also have streamlined the collection of fees for processing of payments to case trustees, thus reducing an administrative burden in bankruptcy clerks' offices.

NABT continues to pursue various proposals to enhance Chapter 7 bankruptcy trustees' compensation.

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QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

*Question.* Judge Gibbons, in your experience, do current judicial pay levels pose a threat to the independence and success of the federal judiciary?

*Answer.* I believe Chief Justice Roberts was correct when he stated in his 2006 Year-End Report on the Judiciary that judicial pay levels pose a threat to the independence of the federal judiciary.

In the past, a federal judgeship was viewed as a capstone to a legal career. As the Chief Justice noted, judges have been leaving the federal bench in increasing numbers. In the past six years 38 judges have left the federal bench, including 17 in the last two years. While this may not represent a mass exodus, it reflects a disturbing trend nonetheless. To the extent that judges are leaving the bench for more lucrative paying jobs then, yes, pay levels do pose a threat to retaining talented, experienced judges. Low pay levels also discourage some well-qualified candidates from seeking and accepting appointment to the federal bench. The strength of our Judiciary is largely determined by the quality of our judicial officers, so the unattractiveness of federal judicial pay is a concern.

Pay erosion is also affecting diversity on the bench. If only the extremely wealthy can afford to accept an appointment, or only those who are appointed from within government service, we will lose diversity on the federal bench.

The Framers of our Constitution saw judicial independence as linked to life tenure. Time has verified their wisdom. Federal judges have historically been scrupulous about adhering to the rule of law and excluding extraneous and inappropriate factors from their decision-making. Chronically low pay levels threaten to create a Judiciary in which judges worry about what their next job will be and whether litigants will be in a position to affect their future careers, which would jeopardize judicial independence and public confidence in an independent Judiciary. This would be a Judiciary far different from that envisioned by the Framers and one with fewer institutional protections against inappropriate influences. I do not believe that it is desirable to test our constitutional system by paying judges inadequately.

*Question.* In its 1995 Long Range Plan for the Federal Courts, the Judicial Conference recommended giving credit toward retirement benefits for years served as bankruptcy and magistrate judges when such judges are elevated to the Article III bench. Do you believe that bankruptcy and magistrate judges' current inability to receive retirement credits is a disincentive for qualified, experienced bankruptcy and magistrate judges to seek promotion to the District Court?

*Answer.* It could possibly be a disincentive for bankruptcy judges and magistrate judges to seek Article III judgeships because the years they served in those positions would not be credited towards meeting Article III retirement eligibility. Article III judges must satisfy the "rule of 80," that is, pursuant to 28 U.S.C. § 371(a), (b) and (c), an Article III judge may not retire from office or take senior status until the judge reaches age 65 with a minimum of 15 years of Article III service.

Bankruptcy judges and magistrate judges are not required to satisfy the "rule of 80" provision. Therefore, depending on the age of the bankruptcy judge or magistrate judge, he/she may be able to retire earlier if he/she remains in that capacity. Under the Judicial Retirement System (JRS), a bankruptcy or magistrate judge can retire on an annuity after eight years of service, payable at age 65. For example, a bankruptcy judge or magistrate judge appointed at age 50 will have vested in a JRS annuity at age 58 equal to 8/14 (57 percent) of the salary of the office (payable at age 65); and that same judge would receive a full salary JRS retirement at 65. If that same judge were elevated to an Article III judgeship at age 58, he or she would not be entitled to an Article III "rule of 80" retirement until age 69 when the age and years of service total at least 80. If that judge were allowed to receive credit for his or her 8 years of bankruptcy judge or magistrate judge service, that judge would be entitled to "rule of 80" retirement at age 65 instead of 69.

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QUESTIONS SUBMITTED BY SENATOR SAM BROWNBACK

*Question.* Your revised fiscal year 2008 budget submission does not request resources for additional staff. Do you feel that you currently have the appropriate number of staff to address your workload?

Answer. No, the Judiciary does not have the appropriate number of staff to address current workload. The steady workload growth in recent years has not been matched with the staffing resources needed to keep up with that workload. Between fiscal years 2001 and 2006 the courts' aggregate caseload increased by 23 percent while staffing resources increased by only 1 percent.

The Judiciary's staffing formulas indicate that an additional 2,000 staff are required in order for clerks and probation offices to be staffed fully. However, because of the late enactment of appropriations and uncertainty about whether funding will be available in the subsequent year to pay newly hired staff, court managers have been reluctant to hire. This also contributes to the widening gap between workload and staffing resources. The Judiciary has sought to narrow the gap between staffing levels and workload through the implementation of automation and technology initiatives, improved business practices, and cost-containment efforts, but has not been able to close it entirely.

The \$20 million provided in fiscal year 2007 will enable the courts to hire about 200 new staff to meet workload demands. However, because full-year fiscal year 2007 funding was not made available to the courts until six months into the fiscal year, and given the lead time it takes to recruit and hire, all \$20 million cannot be obligated during fiscal year 2007. We have therefore set aside in reserve the remaining \$14.3 million (the \$20 million less \$5.7 million for new staff in the 2007 plan) so that funding will be available in fiscal year 2008 for courts to continue to fill these positions.

The fact that the courts' workload has begun to stabilize provides the Judiciary an opportunity to use this funding to partially close the gap between current staffing levels and workload.

*Question.* Given the reduced bankruptcy filing levels over the past 18 months, why does the 2008 Budget Request not reflect a staffing reduction in bankruptcy courts?

Answer.

#### *Workload Per Case Is Increasing*

Although bankruptcy filings are down, by virtue of the law's design, case management under Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 is more complex and time consuming. Court staff are needed to ensure that new requirements mandated by the law to weed out fraudulent debtors and improve the bankruptcy process are being met. Preliminary data from a sampling of courts indicates that per-case work has increased significantly under the new law. Such work not only reflects case management activity related to new requirements, such as means testing for Chapter 7 eligibility, but also to an increased number of motions, orders, and noticing requirements.

Despite the drop in filings, bankruptcy court staff continue to make more than one million docket entries per month and provide quality control checks for one million additional entries generated electronically by attorneys. These figures reflect the results of an initial court sampling of data regarding workload. That data indicates that, under BAPCPA, the number of motions filed per case has increased by 59 percent; more specifically, motions for relief from stay has increased by 73 percent; court orders, by 35 percent, and Chapter 13 cases, the most work intensive cases, by 50 percent.

Pending more definitive information, regarding both filing projections as well as workload analyses, the Judiciary must proceed cautiously to ensure that it protects the needs of the bench, bar, and public. Downsizing of the magnitude that could be required in the bankruptcy clerks' offices could be expensive to conduct as well as disruptive to court services. Once separated, those staff (and their highly specialized electronic case management skills) would not be easily replaced to meet any future upturn in filings. The Judiciary would not only lose its personnel training investment, it would also incur huge severance pay requirements. In the mean time, the courts would not be in a position to address an upswing in filings, especially given the extra work required to carry out the mandates of the law.

#### *Future Filing Trends Still Uncertain*

Eighteen months after implementation of the BAPCPA of 2005, experts still cannot agree on its future impact. Bankruptcy filings for March 2007 were 74,000, the highest since the bankruptcy reform legislation went into effect in October 2005 although based on historical trends March is typically a high filing month.

The Judiciary also recognizes that the root causes of bankruptcy—job loss, business failure, medical bills, credit problems, and divorce—were not affected by the law and are expected to continue to be the primary drivers of caseload. Moreover,

economic reports continue to advise that leading indicators of bankruptcy, such as personal debt, late credit card payments, and mortgage foreclosures, are on the rise.

*Question.* What actions are you taking to align resources more closely with workload?

Answer.

*Work Measurement Begins Summer 2007*

To quantify workload changes under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and align resources accordingly, the Judiciary will be conducting an extensive new work measurement process for the bankruptcy courts this summer. That measurement will be used to develop a new staffing formula for allocating bankruptcy resources in fiscal year 2009.

Until that time, the situation will be monitored carefully and contingency plans developed for implementation beginning in fiscal year 2008 if filings do not show a distinct upward trend by summer 2007.

*Transition Planning In Progress*

For each of the past five years, the bankruptcy clerks program has been downsizing to reflect its increased reliance on electronic filing as well as budget realities. In the process, the program has shed nearly 900 full-time equivalent, on-board employees, about 17 percent of the workforce.

From June through September 2007, various Judicial Conference committees will be considering proposals to continue the gradual reduction in the bankruptcy courts as warranted by filings and (pending the work measurement study) the Judiciary's best professional judgment as to workload. The process must be managed in a way so as to minimize impacts on bankruptcy court operations and staff.

*Question.* We recently received a draft copy of the NAPA study that was directed in the fiscal year 2006 appropriations bill.

What is the Judiciary's reaction to the findings and conclusions?

Answer. The Administrative Office has also received a draft copy of the study and is in the process of preparing agency comments. These comments will be provided to NAPA for its consideration in finalizing the report.

The Administrative Office is pleased with the report's finding that the Judiciary's budget formulation and execution activities reflect sound stewardship of federal funds and its recognition of improvements in the space area, including our relationship with GSA.

Some of the areas addressed in the report (program based budgeting and long-range planning) are issues that the Judiciary has given considerable thought to in the past and the Judiciary welcomes the opportunity to have discussions about them again, taking into account the insights presented in the NAPA report.

*Question.* What actions do you plan to take in the future in response to the study?

Answer. Once we receive a final report, the Judicial Conference Committees will consider the recommendations specific to their areas of jurisdiction. Depending on when the report is received, this could take place either at the summer 2007 meetings or the following winter meetings. We expect a final report in June 2007. Ultimately the Judicial Conference will determine if and how the recommendations are adopted.

*Question.* Please discuss your post-conviction supervision program.

How do you determine the services and support supervisees require and receive, including education, job training, and treatment?

Answer. In most cases, an offender's needs have been identified well before supervision begins, either at the pretrial or presentence stage of the Federal criminal justice system. The presentence report and the resulting sentencing document identify treatment, educational, employment, and other needs that will most likely have associated special conditions of the supervision term.

Following an offender's placement on probation or release from an institution, the probation officer works with the offender to assess the offender's risks, needs and strengths to prepare an individualized comprehensive supervision plan. Not all offenders require the same level of supervision to reach this goal. It is the officer's job to distinguish among them and to implement supervision strategies that are appropriately matched with the offender's risks, needs and strengths.

If substance abuse or mental health treatment conditions are ordered, the officer will either conduct an informed assessment or direct the person to undergo a clinical assessment performed by a professional treatment provider. If treatment is necessary, the officer refers the offender to a treatment program tailored to his needs. Treatment is part of the overall supervision objectives and strategies for the case. The officer monitors the offender's progress in treatment and collaborates with the treatment provider to further the offender's chances for success on supervision.

If the offender is unemployed, the officer determines factors contributing to the situation. Often, officers will assist offenders in finding employment or vocational training programs. Officers maintain contact with employers and educators as necessary to support the offender in meeting his supervision objectives. Many districts have implemented formal employment programs in cooperation with other agencies, such as the Department of Labor, Bureau of Prisons, local one-stop centers, state employment agencies, and local social service agencies to assist offenders in securing and maintaining meaningful employment. Many probation offices hold job fairs in their communities especially geared toward ex-offenders.

If, during the period of supervision, an officer identifies educational, vocational or treatment needs for which there is no court-ordered special condition requiring the offender participation in the program(s), the officer will petition the court to modify the release conditions accordingly. A court-ordered special condition allows the officer to leverage sanctions if the offender does not comply with the condition. In many cases, the backing of the court will induce the offender to achieve the necessary skills and/or treatment necessary to succeed on supervision and beyond. All of the above interventions, in addition to individualized professional care and concern, contribute toward the goal of increasing the likelihood of success on supervision.

*Question.* Do you have any data on education levels of people under supervision and do you ensure that supervisees receive a GED if needed?

*Answer.* If education is identified as a need for an offender who never completed high school, the officer may identify obtainment of a GED as a supervision objective. If so, the officer assists the offender in enrolling in a local educational program. The officer continually monitors the offender's progress in this type of program, as well as in many others, intended to enhance the offender's success on supervision and beyond.

The table below provides data on education levels of people under supervision. It reflects cases received for post-conviction supervision in fiscal year 2006, with education level reported.

Education Level	Number	Percent
No Education .....	478	1
Elementary .....	3,014	6
Some High School .....	12,726	27
GED .....	7,004	15
High School Diploma .....	10,843	23
Vocational Degree .....	487	1
Some College .....	9,471	20
College Graduate .....	3,183	70
Post-Graduate .....	775	2
Total .....	47,981	100

Source: National PACTS Reporting Database.

*Question.* The Judiciary's fiscal year 2007 financial plan and updated 2008 request both include rent reductions.

What additional actions is the Judiciary taking to reduce rent?

*Answer.* The Judiciary has achieved significant rent savings through its rent validation project. This initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery was savings and cost avoidance over three fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to research and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through the rent validation effort we recently identified additional overcharges totaling \$22.5 million in savings and cost avoidance over three years. Total savings have been \$52.5 million. GSA has been very responsive to correcting billing errors that we bring to their attention. By identifying and correcting space rent overcharges we are able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.

*Question.* In particular, a GAO report issued last year identified several opportunities for the Judiciary to reduce its space usage and therefore its rent costs. What has the Judiciary done in response to that report?

*Answer.*

*GAO Recommendation #1*

Work with GSA to track rent and square footage trend data on an annual basis for the following factors: (1) rent component (shell rent, operations, tenant improvements, and other costs) and security (paid to the Department of Homeland Security); (2) judicial function (district, appeals, and bankruptcy); (3) rentable square footage; and (4) geographic location (circuit and district levels). This data will allow the judiciary to create a better national understanding of the effect that local space management decisions have on rent and to identify any mistakes in GSA data.

*Actions Taken By the Judiciary*

The Judiciary is continuing its efforts to obtain from GSA more specific information with regard to its rent bills that will aid the judiciary in assigning costs to its various components. This effort has been quite time consuming as it requires GSA to remeasure its space and reclassify the information in GSA's database according to its type, e.g., district court courtrooms and chambers, clerk's office space, libraries, etc.

The Judiciary is also continuing its national rent validation initiative to identify mistakes in GSA data. This program has two phases that are moving forward on separate but parallel tracks. Thus far, the Judiciary has received \$52.5 million in rent credits and cost avoidance for both current and prior fiscal years.

*GAO Recommendation #2*

Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that charges rent to the circuits and/or districts to encourage more efficient space usage.

*Actions Taken By the Judiciary*

On March 14, 2006, the Judicial Conference approved, in concept, the establishment of an annual budget cap for space rental costs. The budget cap will require that local decision-makers balance competing space requests at the circuit level, so that circuit judicial councils may prioritize their space planning.

Until the implementation methodology for the rent budget cap is established (which is anticipated to be approved by the Judicial Conference in September 2007), the Judiciary has a budget check process in place that applies to any prospectus or non-prospectus space request that has the potential to affect rent. Every such project must be approved by the Judicial Conference of the United States before it can proceed.

*GAO Recommendation #3*

Revise the Design Guide to: (1) establish criteria for the number of appeals courtrooms and chambers; (2) establish criteria for space allocated for senior district judges; and (3) make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter spaces, staff efficiency due to technology) and decrease requirements where appropriate.

*Actions Taken By the Judiciary*

Over the last two years, the Judicial Conference of the United States approved multiple reductions to the space standards set forth in the U.S. Courts Design Guide that have reduced staff office sizes and chambers space for senior, district, appellate, bankruptcy and magistrate judges. In addition, the Committee on Space and Facilities plans to consider the criteria for the number of appeals courtrooms. Finally, the Judicial Conference approved technical amendments including reductions in atrium, lighting, and HVAC systems that will result in cost savings.

As to the impact of electronic filing on court space, the judiciary has reduced Design Guide requirements for some of the clerk's office space, including intake areas and records storage, due to the impact of the electronic case filing/case management system and has reduced the library space by 13 percent due to reductions in law-book collections.

## SUBCOMMITTEE RECESS

Senator DURBIN. I thank you for your attendance today. And the subcommittee hearing is recessed.

[Whereupon, at 4:15 p.m., Wednesday, March 21, the subcommittee was recessed, to reconvene subject to the call of the Chair.]